(13)

No. 90-1126-CSX
Status: GRANTED

Title: Barbara J. Norman, et al., Petitioners
v.
Dorothy Reed, et al.

Docketed:
October 19, 1990

Court: Supreme Court of Illinois

Counsel for petitioner: Pincham Jr.,Robert E.

Vide:
90-1435

Counsel for respondent: Leighton,George N., Odelson,Burton S., Kaplan,Rosalyn B., Adamski,Gregory A.

1 copy ea. pet & appd, 8 1/2 x 11, rec'd 101990-retained 40 printed copies rec'd 011191 011491 ck rec'd

| Entry | Date | Note | Proceedings and Orders |
|---|---|---|---|
| 1 | Oct 19 1990 | G | Application (A90-309) for a stay of enforcement of decision of Illinois Supreme Court, submitted to Justice Stevens. |
| 8 | Oct 19 1990 | G | Petition for writ of certiorari filed. |
| 2 | Oct 22 1990 | | Application (A90-309) granted by Justice Stevens. The mandate of the Illinois Supreme Court is stayed or, if necessary, recalled, pending further order of this Court. |
| 3 | Oct 22 1990 | | (A90-309) Application for stay of enforcement referred to the Court by Justice Stevens. October 26, 1990 Conference. |
| 4 | Oct 23 1990 | | Response to application (A90-309) filed by Dorothy Reed, et al.. |
| 5 | Oct 23 1990 | | Response to application (A90-309) filed by Cook County Officers Electoral Board, et al.. |
| 6 | Oct 24 1990 | | (A90-309) Supplement to response to application filed by Dorothy Reed, et al. |
| 7 | Oct 25 1990 | | (A90-309) Application for stay granted by the Court to the extent that the August 29, 1990 decision of the Cook County Officers Electoral Board, No. 90COEB-2, is to remain in effect pending the timely filing and disposition of a petition for a writ of certiorari. |
| 9 | Feb 6 1991 | | Time to file response to petition extended to and including thirty days from date of receipt of petition in No. A-536. |
| 10 | Mar 7 1991 | G | Motion of Independent Voters of Illinois-Independent Precinct Organization for leave to file a brief as amicus curiae in No. 90-1126 filed. |
| 11 | Mar 28 1991 | | Waiver of right of respondent Illinois as Intervenor to respond filed. VIDED. |
| 13 | Apr 8 1991 | | Order extending time to file response to petition until April 15, 1991. |
| 14 | Apr 8 1991 | | The above extension is for all respondents. |
| 16 | Apr 15 1991 | X | Brief of respondents Dorothy Reed, et al. in opposition filed. |
| 15 | Apr 17 1991 | | DISTRIBUTED. May 9, 1991 |
| 18 | May 13 1991 | | REDISTRIBUTED. May 16, 1991 |
| 19 | May 14 1991 | X | Reply brief of petitioners Barbara Norman, et al. filed. |
| 22 | May 15 1991 | | Lodging (2) Received. |

No. 90-1126-CSX

| Entry | Date | Note | Proceedings and Orders |
|---|---|---|---|
| 20 | May 20 1991 | | Motion of Independent Voters of Illinois-Independent Precinct Organization for leave to file a brief as amicus curiae in No. 90-1126 GRANTED. |
| 21 | May 20 1991 | | Petition GRANTED. The case is consolidated with No. 90-1435 and a total of one hour is allotted for oral argument. |
| | | | ********** |
| 23 | Jun 15 1991 | G | Motion of petitioners Cook County Officers Electoral Board, et al. to expedite oral argument filed. |
| 36 | Jun 15 1991 | G | Motion of petitioners Cook County Officers Electoral Board, et al. for divided argument filed. |
| 24 | Jun 28 1991 | | Motion of petitioners Cook County Officers Electoral Board, et al. to expedite oral argument GRANTED. |
| 25 | Jul 5 1991 | | Joint appendix filed. VIDED. |
| 26 | Jul 5 1991 | | Brief amicus curiae of ACLU of Illinois filed. VIDED. |
| 27 | Jul 5 1991 | | Brief amicus curiae of Committee for Party Renewal filed. VIDED. |
| 28 | Jul 5 1991 | | Brief of petitioners Barbara Norman, et al. filed. |
| 29 | Jul 15 1991 | | CIRCULATED. |
| 30 | Jul 19 1991 | | Ceritfied copy of the original record received.(1 box) VIDED. |
| 31 | Jul 19 1991 | | SET FOR ARGUMENT MONDAY, OCTOBER 7, 1991. (4TH CASE) |
| 32 | Aug 2 1991 | | Request by respondents for extension of time to file brief on merits denied. |
| 33 | Aug 7 1991 | X | Brief of respondents Cook County Officers Electoral Board, et al. filed. |
| 34 | Aug 12 1991 | X | Brief of respondents Dorothy Reed, et al. filed. |
| 35 | Aug 27 1991 | X | Reply brief of petitioners Barbara Norman, et al. filed. VIDED. |
| 37 | Sep 13 1991 | | Motion of petitioners Cook County Officers Electoral Board, et al. for divided argument GRANTED. to be divided as follows: petitioners Barbara Norman, et al. - 15 minutes; petitioners Cook County Officers Electoral Board, et al. - 15 minutes; respondents Dorothy Reed, et al. - 30 minutes. |
| 38 | Sep 20 1991 | X | Supplemental brief of petitioners Barbara Norman, et al. filed. |
| 39 | Oct 7 1991 | | ARGUED. |

90-1126

No.

FILED

OCT 19 1990

JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

Petitioners-Appellants,

vs.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents-Appellees.

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**PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT**

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# PETITION FOR WRIT OF CERTIORARI

## QUESTIONS PRESENTED

1) Whether the Illinois Election Code, Ch. 46, Sec. 10-2, Ill.Rev.Stat. 1989, requirement that the Harold Washington Party (HWP) nominating petitions for Cook County, Illinois elective offices contain at least 50,000 registered voters' signatures, geographically apportioned equally between Chicago and suburban Cook County voters as interpreted and held by the Illinois Supreme Court Order of October 12, 1990 which removed the HWP and the HWP candidates from the Cook County, Illinois November 6, 1990 general election ballot, violates the First, Fourteenth and Fifteenth Amendments to the United States Constitution, as previously held by the United States Supreme Court in Moore v. Ogilve, 394 U.S. 814 (1969) and Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979).

2) Whether the requirement of the Illinois Election Code, Ch. 46, Sec. 10-2, Ill.Rev.Stat., 1989, as construed and held by the Illinois Supreme Court Order of October 12, 1990, that the HWP nominating petitions for suburban Cook County Board Commissioners to be elected exclusively by suburban Cook County voters (excluding Chicago voters), contain 25,000 suburban Cook County registered voters' signatures, when said election code simultaneously requires that nominating petitions for the Cook County wide elective offices of State's Attorney, Sheriff, Assessor, Treasurer, Clerk, to be elected by both the voters of Chicago and suburban Cook County need only contain 25,000 registered voters signatures from throughout the entire county, Chicago and suburban Cook County, violates the First, Fourteenth and Fifteenth Amendments to the United States Constitution.

3) Whether the Illinois Election Code, Ch. 46, Sec. 10-5.2, Ill,Rev,Stat,, 1989, as construed and held by the Illinois Supreme Court Order of October 12, 1990, prohibiting the HWP, an established political party in the City of Chicago, from using the HWP name in expanding outside the City of Chicago into Cook County, Illinois in seeking to elect HWP candidates to Cook County, Illinois elective offices, violates the First, Fourteenth and Fifteenth Amendments to the United States Constitution.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

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BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

Petitioners-Appellants,

- vs. -

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents-Appellees.

---

**PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS SUPREME COURT**

---

Petitioners, candidates of the Harold Washington Party (HWP) for Cook County elective offices in the Cook County, Illinois November 6, 1990 general election, respectfully pray that a Writ of Certiorari issue to review the Illinois Supreme Court Order of October 12, 1990, which removed the HWP and the HWP candidates, petitioners, from the Cook County, Illinois November 6, 1990 general election ballot.

## OPINIONS BELOW

The order of the four (4) majority Justices of the Illinois Supreme Court removing the HWP and the HWP candidates from the Cook County, Illinois November 6, 1990 general election ballot, entered on October 12, 1990, has not yet been reported. Although said order, set forth herein in Appendix B, Pages 2 to 5, states that "the order is entered by vote of a majority of the Court, with an opinion to be filed at a later date, ", and that "an opinion will later be filed setting forth the reasons supporting this order.", no such opinion has yet been filed. Parenthetically, we note that two (2) of the four (4) majority Justices of the Illinois Supreme Court, John J. Stamos and Daniel P. Ward, retired from the Court on December 6, 1990 and were replaced on the Court on that date by Justices Michael A. Bilandic and Charles Freeman.

The unreported dissenting opinion of Illinonis Supreme Court Justices Ryan, in which Justices Moran and Miller joined appears in Appendix B, pages 6 to 9 herein. The unreported dissenting opinion of Illinois Supreme Court Justices Miller, in which Justice Moran and Ryan joined, likewise appears in Appendix B, pages 10 to 14 herein.

## JURISDICTION

Petitioners invoke jurisdiction pursuant to 28 U.S.C. Sec. 1257 (2) and (3) and United States Supreme Court Rule 17.1 (b) and (c). By Order entered October 12, 1990 the Illinois Supreme Court, the State Court of last resort, in construing and upholding the validity of Illinois Election Code Ch. 46, Secs. 10-2 and 10-5.2, Ill.Rev.Stat. (1989), decided in a manner



repugnant to the Constitution of the United States questions of federal law regarding the First, Fourteenth and Fifteenth Amendment rights of a political party, its candidates and voters, in direct conflict with the prior decisions of this Court in Moore v. Ogilve , 394 U.S. 814 (1969) and Illinois State Board of Elections v. Socialist Workers Party , 440 U.S. 173 (1979), and in further conflict with the decision of the United States Court of Appeals for the Seventh Circuit in Communist Party of Illinois v. State Board of Elections , 518 F.2d 517 (7th Cir.) cert. denied, 423 U.S. 986 (1975).

## CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievance."

The Fourteenth Amendment to the United States Constitution provides:

> "No state shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Fifteenth Amendment to the United States Constitution provides:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

## STATUTES INVOLVED

Illinois Election Code, Ch. 46, Sec. 10-2, Ill.Rev.Stat. 1989:

> "[Any] such group of persons hereafter desiring to form a new political party within any county shall file such petition with the County Clerk; . . . any such petition for the formation of a new political party . . . shall at the time of filing contain a complete list of candidates of such party for all offices to be filled in the . . . political subdivision . . . ; if such new political party shall be formed for the entire State, shall be signed by 1% of the number of voters who voted at the next preceding State-wide general election or 25,000 qualified voters, whichever is less. If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area. However, whenever the minimum signature requirement for a district or political subdivision new political party shall exceed the minimum number of signatures for State-wide new political party petitions at the next preceding State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition.
>
> • • •
>
> In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from district and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall



> be circulated only within a district of the political subdivision and signed only by qualified electors who are residents of such district.
>
> . . . Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. <u>The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than 5% of the number of the voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large</u>. **(Emphasis added).**

Illinois Election Code Chapter 46, Section 10-5.2, Ill.Rev.Stat. 1989:

> "All petitions for nomination shall, besides containing the names of the candidates, specify as to each:
>
> • • •
>
> 2. The new political party, if any, represented, expressed in not more than five (5) words. However, such party shall not bear the same name as, nor include the name of any established political party as defined in this Article. This prohibition does not preclude any established political party from making nominations in those cases in which it is authorized to do so."

## STATEMENT OF THE CASE

The HWP is a Chicago, Illinois political party whose membership is predominantly African-American. It was founded and it exists, in part, because of the insults, the disrespect and the denial of reciprocal political empowerment and benefits to Chicago-Cook County African-American voters by the Chicago-Cook County, Illinois Democratic Party, to which many of the HWP members formerly belonged. The HWP was founded and incorporated in Illinois as a political party in 1989. It slated a candidate for mayor of the City of Chicago in the April, 1989 general mayoral election, with nominating petitions which contained the signatures of over 104,000 Chicago registered voters. In the April, 1989 Chicago general mayoral election, the HWP mayoral candidate received 330,000 straight HWP votes, and a gross total of 428,000 votes, approximately 47% of the total votes cast in the election. The HWP thereby became an established political party in the City of Chicago under the Illinois Election Code, Ch. 46, Sec. 10-2, Ill. Rev. Stat., 1989.

Although Richard M. Daley, the Democratic Party mayoral candidate won the mayoral election with a total of 575,000 votes, he received only 295,000 straight party votes in said election, 35,000 straight party votes less than the HWP mayoral candidate. The Republican Party mayoral candidate, Edward Vrdolyak, received less than five percent (5%) of the total votes cast in the election. Thus there are but two established political parties in the City of Chicago, as defined by the Illinois Election Code, the Harold Washington Party and the Democratic Party. Because the Republican Party candidate in the April, 1989 general mayoral election received less than five percent (5%) of the total votes cast, under the provisions of the Illinois Election Code, the Republican Party is not an established political party in the City of Chicago. Parenthetically, there are two established political parties in suburban Cook County outside the City of Chicago, the Republican Party and the Democratic



Party.

To expand itself as an established political party into Cook County, Illinois the HWP on August 6, 1990 filed in the Office of the Cook County, Illinois Clerk its nominating petitions, which contained over 60,000 Chicago and Cook County registered voters' signatures to have its therein named candidates placed on the November 6, 1990 general election ballot for the Cook County, Illinois offices of President of the Cook County Board of Commissioners, Sheriff, State's Attorney, Assessor, Clerk, Treasurer, Superintendent of Education, Commissioners of the Board of Appeals, Cook County and Chicago Commissioners of the Cook County Board and Water Reclamation district Commissioners.

Of the 60,000 signatures on the HWP nominating petitions 44,000 were of Chicago registered voters. About 7,800 signatures were of registered voters residing in suburban Cook County outside Chicago. Approximately 8,000 signatures were of registered voters from both Chicago and suburban Cook County and were for the nomination of Water Reclamation District candidates only.

On August 13, 1990, verified objections individually subscribed and sworn to by five (5) Chicago Cook-County voters, Respondents-Appellees herein, Dorothy Reed, Valerie A. Sutton, Patton L. Feichter, Ervin S. Ricks and Jeanie Barrara, were filed challenging the validity of the HWP nominating petitions. The objectors sought to have the HWP and its candidates removed from the November 6, 1990 Cook County general election ballot. When the objections were filed it was publicly represented by the objectors' attorney that the five objectors were simply five spirited minded voters who filed their objections to remove the HWP and its candidates from the November 6th ballot pursuant only to their civic duty. Evidence presented at the hearing of the objections, however, established that these representations were false, and that the five objectors filed the objections to remove the HWP and its

candidates from the November 6, 1990 ballot at the clandestine and covert instigation, benefit and request of Cook County Illinois Democratic Party Leaders.

The verified objections and the approximately 6,000 " Appendix Recapitulation" sheets which were filed in support of the objections, alleged that the HWP nominating petitions were legally insufficient on grounds that the HWP petitions: 1) Did not contain a judicial slate; 2) Did not contain the requisite 25,000 suburban signatures; 3) Illegally contained the name R. Eugene Pincham, an ineligible candidate; and 5) and 6) Contained illegal, improper, non-genuine signatures of unregistered voters.

The HWP candidates filed with the Cook County Officers Electoral Board motions to strike and dismiss objections one (1) through four (4) on legal grounds, on which the Electoral Board heard arguments of counsel and took the motions to strike and dismiss under advertisement. As to objections numbers five (5) and six (6), i.e., the HWP nominating petitions contained illegal, improper, non-genuine and unregistered voters' signatures, the HWP candidates filed a motion to strike and dismiss objections five and six on the ground inter alia, that each of the Objectors' 6,000 "Appendix Recapitulation" sheets, numbers 1 through 6,000 filed in support of the objections, were the Objectors' recapitulations of the corresponding HWP nominating petitions, numbers 1 through 6,000, and they ostensibly specified the alleged defects in the signatures on the HWP nominating petitions; that from a mere cursory examination of each of the Objectors' 6,000 "Appendix Recapitulation" sheets, they, each and all, were in fact photostatic-duplicate copies of one and the same original and were prima facie fraudulent and illegal.

The Electoral Board held an evidentiary hearing on the HWP Candidate's motion to dismiss the objections, numbers five and six, based on the candidate's allegations that the Objectors' 6,000 "Appendix Recapitulation" sheets were fraudulent.



The uncontradicted direct and cross examination testimony of Bonnie McGuire, a witness for the objectors on said evidentiary hearing, established that the five objectors' sworn objections were false, and that their challenge to remove the HWP and its candidates from the November 6, 1990 ballot was surreptitiously instigated by Cook County Democratic Party Chairman, Thomas Lyons, and the Democratic Party's Attorney, Ray Simon, in whose law office the aforementioned fraudulent 6,000 "Appendix Recapitulation" sheets were first seen by McGuire, and which were shortly thereafter filed by the objectors' attorney in support of the objections.

The undisputed testimony of Bonnie McGuire before the Electoral Board further established that on August 13, 1990, when the objectors filed their objections, no one had checked or compared any address or signatures on the HWP nominating petitions with any address or signatures of any registered voter on the official voters' registration card, commonly referred to as the binder, and therefore, there could not have been a valid or reasonable determination that the signatures on the HWP nominating petitions were invalid or not genuine. as stated in the "Appendix Recapitulation" sheets; and additionally, that no one checked with or ascertained from any signator or any circulator of the HWP nominating petitions, or from any other source, that such signatures were improper or unauthentic. [1]

Upon conclusion of the evidentiary hearing and arguments of counsel, on August 29, 1990 the Electoral Board rendered its written decision, Appendix D. The Electoral Board's decision overruled the Objectors' objections and

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[1] Based, in part, on the foregoing testimonial revelation of Bonnie McGuire before the Electoral Board, the HWP filed a civil action for money damages against the Cook County, Illinois Democratic Party, its Chairman, Thomas Lyons, its attorney, Raymond Simon, Bonnie McGuire, and five objectors et.al., for engaging in an illegal conspiracy to remove the HWP and its candidates from the November 6, 1990 Cook County, Illinois general election ballot in violation of 42 U.S.C., Sec. 1983 and the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States. This civil action entitled Harold Washington Party v. Cook County Democratic Party, et al., 90 C 5731 is pending in the United States District Court, Northern District of Illinois, Eastern Division the Honorable Charles Kocoras, Presiding.

sustained the HWP candidates' motion to strike and dismiss objections five and six of the Objectors' objections, i.e. the HWP nominating petitions contained illegal signatures.

The Board decreed that the use of the HWP name was not improper and sustained the HWP candidates' motion to strike and dismiss that objection, to which one member dissented in part. The Electoral Board likewise ruled that R. Eugene Pincham's candidacy on the HWP nominating petitions was valid and sustained the HWP's motion to dismiss this objection. The Board similarly ruled on the failure to slate judicial candidates objection, one member dissenting. The Board upheld the objectors' challenge to the HWP Water Reclamation and Suburban Cook County Board of Commissioners nominating petitions on the ground that these two nominating petitions lacked the required 25,000 signatures under Ch. 46, Sec. 10-2, Ill.Rev.Stat., 1989, the Illinois Election Code.

Thus, the Board held that the HWP nominating petitions for the Cook County offices of President of the Board of Commissioners, State's Attorney, Assessor, Clerk, Sheriff, Treasurer, Superintendent of Education, Commissioner of Board of Appeals and the Chicago member of the Cook County Board of Commissioners were valid and the Board certified these HWP candidates to the November 6, 1990 general election ballot. Conversely, the Electoral Board ruled that because the HWP Water Reclamation nominating petitions did not contain 25,000 Chicago-Cook County registered voters signatures, and that because the HWP Suburban Cook County Board of Commissioners nominating petitions did not contain 25,000 suburban Cook County registered voters' signatures, said nominating petitions were invalid and that the HWP candidates for these two offices would not be placed on the November 6, 1990 ballot.

The Objectors did not seek judicial review of the Board's decision dismissing objections numbered five and six based on the fraudulent "Appendix



Recapitulation" sheets. The Objectors filed a petition for judicial review of that portion of the Board's decision which dismissed objections numbered one through four, i.e., (1) no judicial slate, (2) the lack of 25,000 suburban signatures, (3) use of the Harold Washington Party name, and (4) R, Eugene Pincham, an ineligible candidate. The HWP candidates filed a petition for judicial review of the Board's decision striking from the ballot the HWP candidates for suburban membership on the Cook County Board of Commissioners from the November 6, 1990 ballot. [2]

After argument of counsel, on September 20, 1990 the Circuit (Review) Court entered it's decision Appendix C, pages 15 to 24, removing the HWP and all the HWP candidates from the Cook County November 6, 1990 ballot, on the ground that "the failure to obtain 25,000 signatures for the suburban Cook County Commissioners candidates voids the entire slate of Cook County candidates of the Harold Washington Party."

The HWP candidates appealed to the Illinois Appellate Court. The objectors moved for a direct and expedited appeal to the Illinois Supreme Court, which granted the motion. On October 12, 1990, a majority of four (4) of the Justices of the Illinois Supreme Court, divided strictly along partisan political party lines, entered an order which affirmed the Circuit (Review) Court's Decision removing the HWP and its candidates from the November 6, 1990 ballot, Appendix B, pages 2 to 5. The four Democratic Party Justices

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[2] Because the provisions of the Illinois Election Code, Ch. 46, Secs. 10-8 and 10-10.1 preclude the appearances or the participation of the HWP and/or its voting supporters in the proceedings before the Electoral Board or on appeal before the Courts of Review, six (6) voting supporters of the HWP filed civil action to enjoin the removal of the HWP from the November 6, 1990 general election ballot under the provisions of 42 U.S.C., Sec. 1983 in the United States District Court for the Northern District of Illinois, Eastern Division the Honorable John Nordberg Presiding, Timuel Black, et al., v. Cook County Officers Electoral Board, et al., 90 C 5529. The District Court dismissed the complaint on the grounds that it lacked subject matter jurisdiction. An appeal of said dismissal is now pending in the United States Court of Appeals for the Seventh Circuit, 90 C 3203.

held that Sec. 10-2 of the Illinois Election Code required the HWP nominating petitions to contain 25,000 signatures of suburban Cook County registered voters and 25,000 signatures of Chicago registered voters, and Sec. 10-5 of the Illinois Election Code prohibited the HWP from using the name "Harold Washington Party" in expanding from Chicago into suburban Cook County. Three (3) Justices of the Illinois Supreme Court dissented, and stated "the majority result in the present case seemingly conflicts with the Supreme Court's decision in Illinois State Board of Election v. Socialist Workers Party, supra, which invalidated, on constitutional grounds, an earlier provision in Sec. 10-2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide. The majority's construction of the statute produces a similar disparity." Appendix B, pages 6 to 14 .



## REASONS FOR GRANTING THE WRIT

### I.

### THE ILLINOIS ELECTION CODE, CH. 46, SEC. 10-2, ILL.REV.STAT. 1989, REQUIREMENT THAT THE HWP NOMINATING PETITIONS FOR COOK COUNTY ELECTIVE OFFICES CONTAIN AT LEAST 50,000 REGISTERED VOTERS' SIGNATURES, GEOGRAPHICALLY APPORTIONED EQUALLY BETWEEN CHICAGO AND SUBURBAN COOK COUNTY ILLINOIS VOTERS VIOLATES THE FIRST, FOURTEENTH AND FIFTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

In Moore v. Ogilve, 394 U.S. 814 (1969), this Court struck down on constitutional equal protection grounds the Illinois Election Code requirement that nominating petitions of a candidate for statewide office be geographically apportioned. Thereafter, the Illinois Election Code was amended to provide that not more than 13,000 signatures on a new party's petition for state-wide elections could come from any one county. The Court of Appeals for the Seventh Circuit held that this amended provision unconstitutional in Communist Party of Illinois v. State Board of Elections, 518 F.2d 517, cert denied, 423 U.S. 986 (1975).

Subsequently, in Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979) this Court ruled that to require more than 25,000 signatures on nominating petitions for candidates seeking election in a political subdivision of the State of Illinois under the banner of a new political party is unconstitutional and deprives the party, its candidates and voters of equal protection.

The Illinois Election Code, Ch. 46, Sec. 10-2 provides in relevant part:

"The entire petition, including all components of qualified voters of the entire political subdivision equaling in number not less than (25,000) or 5% of the number of voters who voted at the next preceding regular election in such political subdivision in which an officer was elected to serve the political subdivision at large.

• • •

However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for state-wide general election, such state-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition."

Thus, the minimum number of signatures required state-wide for state-wide office is 25,000. But the political subdivision at issue in the case at bar is Cook County. Voters in both Chicago and suburban Cook County vote for the Cook County political offices of County Board President, State's Attorney, Assessor, Clerk, Treasurer, Sheriff, Superintendent of Educational Services and Board of Appeal Commissioners. Nonetheless, and notwithstanding this Court's prior decisions in Ogilve and Socialist Workers Party the Supreme Court of Illinois interpreted Sec. 10-2 to require that the HWP nominating petition for Cook County elective offices must have a total of 50,000 signatures geographically apportioned between the City of Chicago and suburban Cook County. In Ogilve this Court ruled "it is no answer to the argument under the Equal Protection Clause that the [Illinois election] law was designed to require state-wide support for launching a new political party rather than support from a few localities." In the instant case, Sec. 10-2 of the Illinois Elecion Code cannot be constitutionally interpreted to require geographical apportionment of the necessary signatures between the city and suburbs or to require more than a



total of 25,000 signatures, or to require 25,000 registered voters' signtatures from each of the political subdivisions, i.e., Chicago and Cook County.

This court stated in Socialist Workers Party , "we therefore hold that the Illinois Election Code is unconstitutional insofar as it requires independent candidates in new political parties to obtain more than 25,000 signatures in Chicago."

Likewise in the case at bar, the Illinois Supreme Court's majority interpretation that Sec. 10-2 requires 25,000 voters' signatures from suburban Cook County Board Commision members, when only 25,000 signatures are required from the entire County, including Chicago, for the county-wide offices of State's Attorney, Treasurer, Clerk, Assessor, and County Board President, likewise violates constitutional equal protection.

In Lubin v. Panish, 415 U.S.709, this court stated:

"This legitimate state interest, [to keep the ballot free from being crowded by frivolous candidates] however, must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity. The interests involved are not merely those of parties or individual candidates; the voters can assert their preference only through candidates or parties or both and it is this broad interest that must be weighed in the balance. The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the right of voters." Id. at 716.

There is not the slightest suggestion that the HWP candidates are frivolous or that the state's interest in the case at bar is "screening out frivoulous candidates". Illinois State Board of Election v. Socialist Workers Party, 440 U.S. 173, 195, (1979). The minority dissenting opinion of the Illinois Supreme Court, in the case at bar states, "The formation of political parties and the freedom to vote for candidates of

ones choosing are fundamental rights under both the Federal and State Constitutions. (citations omitted) The various provisions of the Election Code deserve a liberal construction so that those rights may be fulfilled. The Court's decision in the present case is not compelled by a fair reading of the relevant statutes and unnecessarily hampers voters of this State in the exercise of their rights." Appendix B, pages 6 to 14 .

The Striking of the HWP and its candidates from the November 6, 1990 general election ballot and the resultant disenfranchisement of its supporting voters is unprecedented and constiutionally repugnant. McCarthy v. Briscoe, 429 U.S. 1317 (1976). Indeed, we note the majority Illinois Supreme Court Order removing the HWP and all its candidates from the November 6, 1990 ballot is contrary and repugnant to even that court's prior decision in Anderson v. Schneider , 62 Ill.2d 165 (1977).

In Schneider, the Electoral Board struck the nominating petition of an entire party and all of its candidates from the ballot upon determining that one of the party's candidates was legally ineligible. The Electoral Board held that because the candidate was ineligible, the party failed to nominate an entire slate of candidates and the nominating petitions were therefore invalid. The Illinois Supreme Court ruled:

> "The sanction imposed by the Electoral Board and the Circuit Court was a harsh one. It effects not only the rights of the candidates but those of the voters. Nor have the defendants suggested any reason why such a sanction is necessary to protect the integrity of the electoral process.
>
> It is now well recognized that the power of the state in determining voter qualifications and the conduct of elections must be exercised in a manner consistent with the Equal Protection and Due Process Clauses of the Fourteenth Amendment and with the interrelated right to associate for political purposes which is guaranteed by the First Amendment.



> That the process of denying a candidate a place on the ballor because of the ineligibility of other candidates is constitutionally vulnerable is particularly manifest from Lubin v. Panish, 415 U.S. 709 (1974).
>
> Certainly there is no interest necessary to preserve the integrity of the ballot justifying the removal of the party and all of its candidates from the ballot because of want of eligibility of a single candidate.
>
> We hold Sec. 10-2 confers no authority for the removal of all of the candidates because one is unqualified." 67 Ill.2d 165, 171, 174, 175, 176. (Emphasis added)

Since Schneider, the Illinois legislature has not designated the sanctions or remedy to be imposed because of a political party's failure to completely comply with the full slate requirement or other requirements of the election code. To leave such unbridled remedies to the undefined, arbitrary and whimsical determinations of the numerous Illinois Reviewing Circuit and Appellate Courts, Electoral Boards and the Illinois Supreme Court violates fundamental constitutional due process and equal protection. Parenthetically, we note that both the Democratic and Republican Parties regularly, throughout the State, in varying elections fail to slate a complete list of candidates of such party for all offices to be filled in such elections.

It is patently clear that the majority Illinois Supreme Court Order construing Ch. 26, Sec. 10-2 of the Illinois Election Code to require that the HWP nominating petitions contain 25,000 suburban Cook County and 25,000 Chicago registered voters' signatures is in direct conflict with and viciously violates this Courts holdings in Ogilve and Socialist Workers Party and the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

## II.

## THE ILLINOIS SUPREME COURT MAJORITY ORDER BARRING USE BY THE HAROLD WASHINGTON PARTY OF ITS PARTY NAME IN EXPANDING BEYOND THE CITY OF CHICAGO INTO SUBURBAN COOK COUNTY VIOLATES PETITIONERS-APPELLANTS FIRST, FOURTEENTH AND FIFTEENTH AMENDMENT CONSTITUTIONAL RIGHTS

The majority order of the Illinois Supreme Court offers no articulation whatsoever of any state interest to be protected by depriving an established political party the use of its name as it expands. As noted by Illinois Supreme Justice Miller in his dissenting opinion, Appendix B, pages 10 to 14:

> "It is clear, then, that the statutory scheme contemplates that a political party might become an established entity in one district or political subdivision of the state but not in others. With respect to parties that are not established entities on a state-wide basis, I would thus construe the statutory proscription on the use of an established party's name as extending only 'as to such district or political subdivision' in which the party has been established under Article X. Because the Harold Washington Party is an established entity only in the City of Chicago, Article X [of the Illinois Election Code] does not, by its literal terms, prohibit the present candidates from running for county offices under the same party name.
>
> The purpose of the statutory limitation on the names that may be used by a political party are to prevent a new party from gaining ballot access by unfairly piggy backing on the successes of an established party and to avoid confusion. It is clear in the present case that the purpose of the legislation would not be undermined by allowing the county candidates to run under the Harold Washington Party name.



• • •

> Thus, after today's decision, it is not clear how a new party may go about expanding from one district to another."

There is no state interest that justifies the burdensome and complicated regulation as interpreted by the Illinois Supreme Court that in effect makes impracticable any alternative to the major parties. See, Storer v. Brown, 415 U.S. 724, 746, (1974). "The right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot." Williams v. Rhodes, 393 U.S. 23, 31 (1968). In Socialist Workers Party this Court held that there must be a compelling reason to justify the imposition of such burdens on political parties, as in the instant case. A constitutionally permissable justification must be established to warrant the oppresive ballot status prerequisite in the case at bar. No such justification exists. By denying the HWP the use of its party name in expanding from a city municipal party to a county-wide party, the Illinois Supreme Court impermissably restricted the continued availability of political opportunity to the HWP, its candidates and the party's one half million voters and supporters. Clearly, the HWP has a significant modicum of support. Jentsen v. Fortson, 403, U.S. 431 (1971). The Illinois Supreme Court's refusal to allow the HWP to use its name for geographical extension purposes cannot constitutionally stand.

## III.

### This Case Raises Important and Unresolved Constitutional Issues Left Unresolved By Moore v. Ogilve, And Illinois State Board of Elections v. Socialist Workers Party, And The Constitutional Conflict Is Likely To Recur

This Court has consistently and repeatedly prohibited intentional racial discrimination in restricting access to the ballot. This Court has also consistently and repeatedly held that undue restrictions and burdens on independent candidates and political parties violates the First and Fourteenth Amendments just as racial discrimination in restricting access to the ballot violates the Fifteenth Amendment to the United States Constitution. Both this Court and the United States Court of Appeals for the Seventh Circuit have repeatedly held provisions of the Illinois Election Code and Sec. 10-2 thereof to be unconstitutional. Moore v. Ogilve, supra; Illinois State Board of Elections v. Socialist Workers Party, supra; Communist Party of Illinois v. State Board of Elections, supra. But, because Chicago and Cook County have so long been dominated and monopolized by a single political party, the Democratic Party, political dissent has been successfully suppressed and alternative political options to the Democratic Party have largely been nonexistent. Even the Republican party, a major political party established state-wide (and elsewhere throughout the United States) has had little success in breaking the political strangle-hold of the Democratic Party in the Chicago metropolitan area. A republican form of government, guaranteed by the United States Constitution, compels that this Court once again intervene and secure free access to the ballot for the citizens of Chicago and Cook County, Illinois. See, McCarthy v. Briscoe, 429 U.S. 1317, 1323 (1976).

The Court held in Reynolds v. Sims, 377 U.S. 533 at 554:



> "The right to vote freely for the candidate of one's choice is the essence of a democratic society, and any restrictions on the right strike at the heart of representative government and the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." Id. at 555.

It is the position of the HWP that the sole purpose of the objectors and the lower courts' ruling removing the HWP and its candidates from the ballot is to disenfranchise, delay and prevent the voters of Cook County from making their own independent choices and to prevent those voters who choose to vote for the HWP candidates in the November 6, 1990 general election from doing so. It is further the HWP position that the purpose of the partisan, politically motivated, erroneous, adverse ruling, contrary to established federal law, by the Illinois Supreme Court was to prevent HWP candidates from free access to the November 6, 1990 election ballot for the benefit for the Chicago Cook County Democratic Party.

## CONCLUSION

For the reasons set forth in this petition, we pray that the Writ of Certiorari to review the Illinois Supreme Court Order of October 12, 1990 removing the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot.

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Appendix A ..... 1

Illinois Supreme Court Order of October 18, 1990
denying recall of its Mandate ..... 1

No. 70833

IN THE
SUPREME COURT OF ILLINOIS

DOROTHY REED, et al.,

Petitioners-Appellees,

v.

BARBARA J. NORMAN

Respondents-Appellants.

**ORDER**

Upon Written Motion to Recall the Mandate of this Court of October, 12, 1990, this Court herby denies said Motion.

**Page**

Appendix B ..... 2-14

Order of Four Majority Illinois Supreme Court Justices entered October 12, 1990 removing the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot ..... 2-5

The two dissenting opinions of the three dissenting Illinois Supreme Court Justices ..... 6-14

IN THE
SUPREME COURT OF ILLINOIS

DOROTHY REED et al.,

Petitioners-Appellees,

v.

BARBARA J. NORMAN et al.,

Respondents-Appellants.

**ORDER**

This case is before the court on an appeal and cross-appeal from a judgment of the circuit court of Cook County to this court. Pursuant to our Rule 302 (b) ( 107 Ill. 2d R. 302 (b) ). The briefs of the parties were submitted to the court. Because of the time limitation associated with the general election to be held in this state on November 6, 1990, the following order is entered by vote of a majority of the court, with an opinion to be filed at a later date.

The circuit court ruled that the holding of the Cook County courty officers electoral board that the Metropolitan Water Reclamation District Harold Washington Party candidates be removed from the ballot was correct.

That ruling of the circuit court has not been challenged in this appeal. The ruling of the circuit court is therefore final and will not be considered in this order.

The Cook County officers electoral board held, and the circuit court, on review, affirmed the holding, that the petitioners use of the name "Harold Washington Party" in the petition to form a new political party, pursuant to section 10-2 of the Election Code ( Ill. Rev. Stat. 1989, ch. 46, per. 10-2 ),does not violate the provisions of section 10-5 of the Election Code ( Ill. Rev. Stat. 1989, ch. 46, par. 10-5 ), which prohibits use of the name of an established political party ( Ill. Rev. Stat. 1989, ch. 46, par. 10-1 et seq. ). This court, by majority vote, holds that the petitioners use of the Harold Washington Party name in their petition did violate the provisions of section 10-5. Accordingly, the holding of the circuit court on this question is hereby reversed as erroneous.

The Cook County county officers electoral board held, and the circuit court affirmed, that the city of Chicago and the suburban area of Cook County are two separate districts from which officers are to be elected and that, under section 10-2 for the formation of a new political party, a separate component of the petition for each district must be circulated, and each component must be signed by 5% of the number of voters who voted at the last election to elect officers serving that district, not to exceed 25,000. The circuit court held that the component of the potition for the suburban district did not comply with the requirement of section 10-2 of the Code in this respect. By majority vote of this court, the holding of the circuit court is affirmed: that the component for the suburban district had an insufficient number of signatures for compliance with



section 10-2 of the Election Code and that the names of the candidates listed and nominated for the suburban district thus did not qualify for placement on the ballot.

By Majority vote of this court the further holdings of the circuit court are affirmed: that section 10-2 requires that a petition to form a new political party contain the above described number of signatures from alol components of the petition, that is, from the components of Chicago and the suburbs; that because of this failure to comply with section 10-2 the names of all candidates listed and nominated according to the appellants petition fail to quality for placement on the ballot at the general election on November 6, 1990.

It will not be necessary to discuss other points raised on the appeal. It is noted, however, that it appearing that R. Eugene Pincham, Sr., has been nominated as a Democratic Party candidate for the office of Cook County commissioner, that Qualification and candidacy are of course not affected by this order.

It is further ordered by a majority of this court:

(a) That any injunction or stay order heretofore issued, by either the circuit court of Cook County or the appellate court, relating to the appearance of the Harold Washington Party or its candidates on the ballot for the general election referred to above is vacated.

(b) That the Cook County clerk and the Chicago board of election commissioners shall proceed forthwith to prepare and print ballots for the general election in accordance with the provisions of this order.

(c) That the mandate of this court shall issue immediately and without stay.

An opinion will later be filed setting forth the reasons supporting this order.

DATED this 12th day of October, 1990.

Moran, C.J., Ryan and Miller, JJ., dissenting.





IN THE
SUPREME COURT OF ILLINOIS

DOROTHY REED et al.,

Petitioners-Appellees,

v.

BARBARA J. NORMAN et al.,

Respondents-Appellants.

**ORDER**

JUSTICE RYAN dissenting:

I dissent from the order of the majority of this court, which denies the Harold Washington Party candidates access to the ballot. The order results from a needlessly narrow and strict construction of the Illinois Election Code and a construction which I see as wrong. I also join in Justice Miller's dissent.

In holding that the petitioners use of the name Harold Washington Party violates the provisions of section 10--5 of the Election Code (Ill. Rev. Stat. 1989, ch. 46, par. 10--5), the majority of this court has focused primarily on the language of section 10--5 of the Election Code, which prohibits the use by a new political party of the name of an established party. However, section 10--5 does not just refer to an established party, but refers to an established party "as defined in this article." Section 10--2 of the Election Code defines established party. These two sections of the

Code, read together, support the conclusion that the petition before this court does not violate section 10--5, a position which I will explain in detail in a dissent I will write to the opinion the majority will file at a later date.

As to the provisions of the Election Code concerning the required number of signatures on a new party's petition, here again the majority of this court adopted a narrow and strict construction of the language of section 10--2. In fact, theprovisions of section 10--2 are contradictory in this regard and the majority chose to adopt the language that would rule the Harold Washington party candidates from suburban Cook County off the ballot instead of the language of that section which would have permitted them to remain on the ballot. The last sentence of the fourth paragraph of section 10--2 would limit the number of signatures required from all of Cook County to 25,000, whereas the next to the last sentence of the seventh paragraph of section 10--2 appears to require 25,000 signatures from each component of the county petition; that is, the City of Chicago and the suburban areas.

The last sentence of the seventh paragraph of section 10--2 does not require that the petition contain 25,000 signatures from all components, as the majority of this court holds. Instead, that sentence provides: "the entire petition, including all components, "must be signed by the required number of signatures, so it is the entire petition that must have 25,000 signatures. If the statute would have said "including each component" instead of "including all components" there would have been some justification for the majority's holding that the component for the suburbs and the component from Chicago each have 25,000 signatures. In the next to the last sentence of the seventh paragraph the legislature referred to each



component when it meant each . However, in the last sentence of that paragraph in speaking of the entire petition the legislature stated "including all components." A logical construction would be that the entire petition for the formation of a new party in Cook County must have 25,000 signatures.

This construction is strongly supported by the last sentence of the fourth paragraph of section 10--2 to which I earlier referred. That sentence would require that the minimum number of signatures for all of Cook County be 25,000.

As notes below, this court should construe the Election Code liberally in favor of permitting the Harold Washington Party access to the ballot. The majority of this court has instead read the signature requierments narrowly and strictly and has ignored contradicting and limiting language of section 10--2 in order to find that the petition did not have the required number of signatures.

We are dealing here with fundamental rights. In Illinois State Board of Elections v. Socialist Workers Party (1979), 440 U.S. 173, 59 L. ED. 2d 230, 99 S. Ct. 983, the Supreme Court stated that restrictions on access to the ballot burden two fundamental rights, the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters to cast their votes effectively. The Court, in that case, also stated that even when pursuing a legitimate interest, a State may not choose means which unnecessarily restrict constitutionally protected interests.

In light of theholding in Socialist Workers Party, it is incumbent upon this court to avoid a narrow and strict construction of the Election Code, Which denies the Harold Washington Party candidates access to the ballot. Instead, this court should apply a constrution of those sections

involved in this case which recognizes the fundamental rights involved, and which does not unnecessarily impinge upon those rights. Such a construction is logically possible by construing the sections involved together and liberally, and by not narrowly focusing solely on the limiting and restrictive language of specific sections.

In sum, since we are dealing here with fundamental rights. I believe it is incumbent upon this court to adopt the construction of the Election Code which will afford the Harold Washington Party candidates access to the ballot.

As to the majority's statement that the order of this court does not affect the candidacy of R. Eugene Pincham, Sr., as a candidate on the Democratic ticket, I do not dissent, because that issue was never briefed or arqued in this court and was not decided in the circuit court, whose judgment we are reviewing. I do, however, strongly object to such an advisory poinion being contained in this order. That question may well be the issue in another lawsuit, Mr. Pincham was counsel for the Harold Washington Party, petitioners in the proceedings below and in this court. I cannot understand why, After knocking the Harold Washington Party candidates off the ballot, the majority of this court finds it necessary to attempt to appease Mr. Pincham by gratuitously throwing him this morsel.

For the above reasons, I dissent.

CHIEF JUSTICE MORAN and JUSTICE MILLER join in this dissent.





IN THE
SUPREME COURT OF ILLINOIS

DOROTHY REED et al.,

Petitioners-Appellees,

v.

BARBARA J. NORMAN et al.,

Respondents-Appellants.

**ORDER**

JUSTICE MILLER, also dissenting:

By giving a cramped construction to several key provisions of the Election Code, today's decision nullifies without cause the efforts of the thousands of men and women who worked to place candidates of the Harold Washington Party on the Movember 1990 ballot in Cook County. I cannot concur in the court's disposition of the present matter, and I therefore join Justice Ryan's dissent and, in addition, write separately.

Section 10--5 of the Election Code bars a new political party from usingf the name "of any established political party as defined in this Article." (Ill. Rev. Stat. 1989, ch. 46, par. 10--5.) Under section 10--2, a political party may become established either on a statewide basis or in discrete districts or political subdivisions of the State. (Ill. Rev. Stat. 1989,

ch. 46,par. 10--2.) A party becomes established on a statewide basis if its candidate for the office of governor receives more than 5% of the entire vote cast for that position. A party becomes established on other than a statewide basis if one of its candidates for office in a political subdivision or district, including a municipality, recieves more than 5% of the entire vote cast within that area. In that instance, the party is established "as to such district or political subdivision." Ill. Rev. Stat. 1989, ch. 46, par. 10--2.

It is clear, then, that the statutory scheme contemplates that a political party might become an established entity in one district or political subdivision of the State but not in others. With respect to parties that are not established entities on a statewide basis, I would thus construe the statutory proscription on the use of an established party's name as extending only "as to such district or political subdivision" of the State but not in others. With respect to parties that are not established party's name as extending only "as to such district or political subdivision" in which the party has been established under Article 10. Because the Harold Washington Party is as established entity only in the City of Chicago, article 10 does not, by its literal terms, prohibit the present candidates from running for county offices under the same party name.

The purposes of the statutory limitation on the names that may be used by a new political party are to prevent a new party from gaining ballot access by unfairly piggybacking on the success of an established party and to avoid voter confusion. It is clear in the present case that the purposes of the legislation would not be undermined by allowing the county candidates



to run under the Harold Washington Party name. Before the electoral board. Alderman Timothy Evans, the Harold Washington Party candidate for mayor in the April 1989 Chicago mayoral election, testified that the present candidates for county office were using the party name with his approval. It is certainly true that Alderman Evans would have no authority to consent to a violation of the plain language of the statute. As I have already explained, however, the county candidates use of the name of the Harold Washington Party is not literally proscribed by the Election Code. Alderman Evans testimony should be considered in determining whether the purposes of the statute are implicated in the present case, and his statements demonstrate that the county candidates were not taking unfair advantage of the party's showing in the earlier municipal election.

Indeed, the majority's decision will significantly burden efforts by a new party to expand on other than a statewide basis. It is no answer to suggest, as the objectors do, that a party seeking to slate candidates in a district or political subdivision in which it had not previously run may use the Primary and caucus procedures contained in Article 7 of the Election Code. By their terms, those provisions are applicable only to political parties already established on either a statewide basis or in the particular district or political subdivision in which nomination is sought. (See Ill. Rev. Stat. 1989, ch. 46, par. 7--2.) Thuis, after today's decision, it is not clear how a new party may go about expanding from one district to another.

The majority also construes section 10--2 as requiring a new party to submit 25,000 signatures from both the city and suburban components of Cook County. Under the majority's interpretation, a new political party fielding candidates in that county must therefore gather a total of 50,000

signatures in support of its slate or face disqualification of the entire ticket. Section 10--2 provides, however, that a party seeking to run on a statewide basis will never be required to submit more than 25,000 signatures. The majority's result in the present case seemingly conflicts with the Supreme Court's decision in Illinois State Board of Elections v. Socialist Workers Party (1979), 440 U.S. 173, 59 L. Ed. 2d 230, 99 S. Ct. 983, which invalidated, on constitutional grounds, an earlier provision in section 10--2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide. The Majority's construction of the statute produces a similar disparity. When statutory language is reasonably susceptible to several interpretations, a construction favoring its constitutionality will be preferred. (See People v. Orth (1988), 124 Ill. 2d 326, 334; Cronin v. Lindberg (1976), 66 Ill. 2d 47, 60; see also Morrison v. Olson (1988), 487 U.S. 654, 682, 101 L. Ed. 2d 569, 600, 108 S. Ct. 2597.) As the record in this case demonstrates, there are several narrower alternatives to the majority's interpretation of the provisions of section 10--2 pertaining to signature requirements. None of those alternatives would compel the harsh result of invalidating the entire ticket for the failure to present a total of 50,000 signatures for the combined components of the Cook County slate.

Finally, the court unnecessarily offers advice to Harold Washington Party candidate R. Eugene Pincham, Sr., that he may continue to run as a Democratic candidate for the position of county commissioner, for which he previously qualified through primary election. His eligibility to run as a candidate of that party is not at issue here, however, and candidate Pincham is well aware of his rights and obligations under the Election Code. He needs no instructions from the majority with respect to those matters.



The formation of political parties and the freedom to vote for candidates of one's choosing are fundamental rights under both the Federal and State Constitutions. (Illinois State Board of Elections v. Socialist Workers Party (1979), 440 U.S. 173, 59 L. Ed. 2d 230, 99 S. Ct. 983; Anderson v. Schneider (1977), 67 Ill. 2d 165.) The various provisions of the Election Code deserve a liberal construction so that those rights may be fulfilled. The court's decision in the present case is not compelled by a fair reading of the relevant statutes and unnecessarily hampers voters of this State in the exercise of their rights.

For the reasons stated. I respectfully dissent.

CHIEF JUSTICE MORAN and JUSTICE RYAN join in this dissent.

**Page**

Appendix C ..... 15-24

Cook County, Illinois Circuit (Review) Court Order of September 10, 1990 removing the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot ..... 15-24

No. 90 CO 00238
90 CO 00244

IN THE
CIRCUIT COURT OF COOK COUNTY ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE B. SMITH,

Petitioners

vs.

STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; and DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, DAVID BARRERA

Respondents

**ORDER**

This consolidated cause coming to be heard on petition for judicial review from an order of the Electoral Board filed August 29, 1990. Harold Washington Party filed candidates for County Board Pre6ident, Assegsor, Treasurer, Commissioners of the Board of Appeals, Superintendent of the Educational Service Region, State's Attorney, Clerk, Sheriff, County Commissioner and Commissioners of the Metropolitan Water Reclamation District.

Seven separate findings were made by the Board:

1.) The Electoral board was legally constituted.

2.) The objections were filed on time.

3.) Use of the name Harold Washington Party did not conflict with §10-5 of the Election Code.

4.) Candidate R. Eugene Pincham, Sr. can run for County Commissioner under the Harold Washington Party name after being defeated as a democrat for County Board President.

5.) The Harold Washington Party failed to receive the required number of signatures on their petition for Suburban County Commissioners and Metropolitan Water Reclamation District candidates.

6.) Objector did not offer sufficient proof to warrant a binder check.

7.) Judicial candidates did not need to be included on the Harold Washington Party's slate to create a complete slate of county candidates pursuant to the election code.

The following Board rulings are in dispute:

1.) Use of the name Harold Washington Party did not conflict with §10-5 of the Election Code.

2.) Candidate R. Eugene Pincham, Sr. can run for County Commissioner under the Harold Washington Party name after being defeated as a democrat for County Board President.

3.) The Harold Washington Party failed to receive the required number of signatures on their petition for Suburban County Commissioners and Metropolitan Water Reclamation District candidates.



4.) Judicial candidates did not need to be included on the Harold Washington Party's slate to create a complete slate of candidates pursuant to the election code.

## RULINGS

I. As to the use of the name Harold Washington Party this court, on other grounds, affirms the decision of the Board.
This court reasons as follows:

A.) The Harold Washington Party became an established political party in Chicago pursuant to 10-2 of the election code at the time of the April, 1989 Mayoral election.

B.) While Timothy C. Evans was the only candidate of the Harold Washington Party, his only power, pursuant to §10-2 of the Election Code, was the ability to appoint interim committeemen.

C.) Section 10-2 states as follows:

> A political party which, at the last election in any congressional district, legislative district, county, township, municipality or other political subdivision or district in the State, polled more than 5% of the entire vote cast within such territorial area or political subdivision, as the case may be, has voted as a unit for the election of officers to serve the respective territorial area of such district or political subdivision, is hereby declared to be an established political party within the meaning of this rticle as to such district or olitical subdivision. (emphasis added)

D.) For the purpose of determining a party's status as an established political party, within the meaning of §10-2 of the Election Code, this court recognizes that the City of Chicago and the County of Cook are separate political subdivisions.

E.) County Commissioners are County officers. Since the Harold Washington Party was an established political party only in the political subdivision that is the City of Chicago, only candidates for city offices are prohibited by §10-5 of the Election Code from running as a new political party within the City of Chicago. Section 10-5 of the Election Code states that "Such party shall not bear the same name as, nor include the name of

F.) any established political party." §7-4(6) of the Election Code defines "County Office" as "an office to be filled by the qualified electors of the entire county." These County Commissioners are not being voted on by citizens of the entire county, some being voted in by city voters and some by suburban voters only. This provision also states that "County office also includes the assessor and Board of Appeals and County Commissioners and President of County Board of Cook County and County Board Members...." Since County Commissioner is specifically defined as a "county office," the establishment of the Harold Washington Party in the City of Chicago is irrelevant to the election at issue. (Emphasis added)

G.) Under this construction of §10-2 of the Election Code, one may expand an established political party from one political subdivision to another merely by complying with the new political party requirements of §10-2. Construing §10-2 as written limits the application of §10-5, which deals with the concepts of party stealing and voter confusion. It is not the function of this court to legislate. The legislature may, if it sees fit, re-draft these sections to address these concerns.



II. The court finds that the Board properly ruled that the suburbs are a separate component of Cook County under §10-2 of the Election Code. ThiS statute requires that the new party obtain an appropriate number of signatures in each separate component to place candidates on the ballot. Each component of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the voters in the political subdivision or a number equivalent to 1% of the voters in the State of Illinois, not to exceed 25,000. The Board's ruling as to the exclusion of candidates for County Commissioner from the suburbs was correct.

III. The Board's inclusion on the ballot of candidates for County Commissioner from the city was incorrect.

A. This Court finds that §10-2 of the Election Code states as follows:

In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at large, such petition shall consist of separate components for each district from which an officer is to be elected. . . . **Each component** of the petition for each district from which an officer is to be elected must be signed by qualified voters of the district equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, **including all components**, must be signed by a total of qualified voters of the entire political subdivision equalling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision at which an officer was elected to serve the political subdivision at large.

B. The failure to obtain 5% support or 25,000 signatures for the suburban County Commissioner candidates voids the entire slate of Cook County candidates of the Harold Washington Party petition for two reasons.

1. It fails to comply with §10-2 of the Election Code's requirement of 5% or 25,000 signatures **from all components**.

2. Non-compliance with the suburban component is a failure to file a complete County slate.

a.) Anderson v. Schneider, 67 I11.2d 165, 176, 365 N.E.2d 900, 904, (1977), states that the complete slate requirement of §10-2 of the Election Code confers no authority for the removal of all the candidates because one is unqualified.

b.) In the case at bar, the entire slate of suburban Cook County Commissioners were unqualified. Anderson is inapposite to these facts.

IV. Cross-appellants suggest that §10-2's component aspect is unconstitutional. An Amicus Curiae brief was filed on behalf of the Independent Voters of Illinois - Independent Precinct Organization. A reviewing court will decide a constitutional question only where it is essential to the disposition of the case. In re Application of the County Collector of Kane County for Judgment for Deliquent Taxes



for the Year 1985, 172 Ill.App.3d 897, 122 Ill.Dec. 769, 527 N.E.2d 141 (2d Dist. 1988); citing Bender v. City of Chicago, 58 I11.2d 284, 287, 319 N.E.2d 34 (1974). This case is disposed of on other grounds. The constitutionality of §10-2 of the Election Code need not be addressed.

V. This Court finds that the Board's ruling as to the exclusion of Metropolitan Water Reclamation District candidates was correct, but for the wrong reasons.

A. The Board ruled that the Metropolitan Water Reclamation District was a separate "component" of Cook County under §10-2 of the Election Code.

B. The Court finds that, under §10-2 of the Election Code, the Metropolitan Water Reclamation District is a separate political subdivision and not a component of Cook County, as was held by the Board.

C. Political subdivision is defined as "any unit of local government in which elections are or may be held." Ill.Rev.Stat. Ch. 46 §1-3(6).

D. Since the Metropolitan Water Reclamation District and Cook County are separate units of local government, they are distinct political subdivisions.

E. Section 10-2 of the Election Code requires a new political party to obtain signatures of 5% of the voters or a number equivalent to 1 of the voters in the State of Illinois, not to exceed 25,000. The Harold Washington Party failed to obtain the requisite signatures for the Metropolitan Water Reclamation District, making exclusion from the ballot proper.

F. It should be noted that failure to garner the appropriate voter support in the Metropolitan Water Reclamation District has no affect on the complete slate of Cook County candidates. Section 10-2 requires _ the filing of a complete slate "for all offices to be filled in the... political subdivision.n The slate in the political subdivision of Cook County is complete without the addition of candidates from the political subdivision of the Metropolitan Water Reclamation District. (emphasis added)

VI. As to the issue of whether a failure to include judicial candidates on the Cook County slate was a failure to file a complete slate, this court overrules the Board as follows:

A.) That §10-2 of the Election Code requires that where a petition to form a new political party within a political subdivision is filed, it must contain a component petition for each district contained in that subdivision from which an officer is to be eiected.

B.) §1-3(14) of the Election Code defines "district" as including "judicial districts" and "judicial circuits."

C.) §10-2 of the Election Code requires a list of candidates for "all offices to be filled in the political subdivision at large." Judges to be elected in the Cook County Judicial Circuit are such officers.

D.) That the exclusion of judicial candidates on the slate was a failure to fulfill the "complete slate requirement" of the Election Code. This failure completely invalidates the petition.



VII. The Court affirms the Board's holding that the party switching of R. Eugene Pincham, Sr. did not violate §10-2 of the Election Code. Due to the deficiencies stated above, which invalidate the Harold Washington Party petition, Mr. Pincham may not run as a Harold Washington Party candidate.

VIII. Cross-appellant alleges that there was fraud in objections five and six of the objectors' petition. There was insufficient evidence to established a prima facie case for such fraud.

**IT IS THEREFORE ORDERED**:

1. That the challenged rulings of the electoral board are hereby reversed in so far as they are inconsistent with this opinion.
2. That the Cook County and Chicago oard of Election Commissioners are hereby enjoined from printing the name of Harold Washington Party or the names of any candidates thereof, either with the designation of the Harold Washington Party or without any party designation on the general election ballot for the election to be held on November 6, 1990.
3. That the Electoral Board shall forthwith issue an amended Electoral Board decision in accordance with the rulings herein.
4. That the prior order of September 14, 1990 enjoining the Cook County Clerk and Chicago Board of Elections Commissioners from printing ballots for the November 6, 1990 general election and is hereby vacated.
5. That this order is final and appealable.

ENTERED:

September 20, 1990

DATE

/S/ Eugene L. Wachowski

Hon. Eugene L. Wachowski
Circuit Court 0078

**Page**

Appendix D ..... 25-55

Cook County Officers Electoral Board order and Decision of August 29, 1990 placing the HWP and its candidates on the Cook County, Illinois November 6, 1990 general election ballot ..... 25-55

BEFORE THE COUNTY OFFICERS ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS
TO THE NOMINATION PAPERS OF CANDIDATES FOR
NOMINATION TO OFFICES FROM DISTRk OR DIVISIONS
WHICH ARE COTERMINOUS WITH OR LESS THAN THE
COUNTY OF COOK AND STATE OF ILLINOIS

OBJECTIONS OF THE HAROLD WASHINGTON PARTY, A NEW POLITICAL PARTY, AND TO EACH OF THE FOLLOWING CANDIDATES OF THE HAROLD WASHINGTON PARTY:

COUNTY-WIDE
BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS;

INSIDE THE CITY OF CHICAGO
R. EUGENE PINCHAM, ROBERT E. PINCHAM JR., BARBARA J. NORMAN, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANES, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES;

OUTSIDE THE CITY OF CHICAGO
ROBERT E. BROOKS, JR., MELLO SAM. H. CLORA, JUDY MARIE HAWTHORNE ) CHESTER LeSURE, CELL DUNCAN, DON C PASSMORE, JR., BOBBIE J. SMITH.

**DECISION**

The duly constituted COUNTY OFFICERS ELECTORAL BOARD, consisting of the HONORABLE STANLEY T. KUSPER, JR., HONORABLE AURELIA PUCINSKI and HONORABLE ERNESTO D.

BORGES, public member, replacing the HONORABLE CECIL A. PARTEE, organized by law in response to a Call issued by the HONORABLE STANLEY T. KUSPER, JR., Chairman of said Electoral Board, for the purpose of hearing and passing upon of objections to the nomination papers of candidates for normnation to County-Wide Offices and to the Office of Cook County Commissioner from Chicago and from outside the City of Chicago having convened on August 14, 1990 in room 569 of the Cook County Building, in the City of Chicago, County of Cook and State of Illinois, and having heard and determined the objections to the petitions in the above entitled matter, finds that:

1. The said Electoral Board has been legally constituted according to the laws of the State of minois;

2. Objections to the nomination papers of the candidate herein were duly filed;

3. A Call to the hearing on said objections was duly issued and was caused to be served upon the members of the Electoral Board, the objector and the candidate by mail and by personal service as provided by statute;

4. A public hearing was held on these objections on August 14, 1990, and subsequent dates;



5. There were present at such hearings the following persons, amongothers:

a) Honorable Stanley T. Kusper, Jr., Chairman; Honorable Aurelia Pucinski, Member and Honorable Ernesto D. Borges, Member;

b) The objectors, by their counsel;

c) The party and its candidates, by their counsel;

6. All evidence, if any, that was tendered by those appearing at the hearing was heard and considered by the Board;

7. All arguments, if any, that were made at the hearing were considered by the Board;

8. The Board, having heard oral argument and, considering the legal memoranda and all other evidence presented, hereby makes the findings contained in the attached Opinion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Objections to the nomination papers of the HAROLD WASHINGTON PARTY, for nomination of its candidates to County-Wide Offices, and for its candidates to COOK COUNTY COMMISSIONER inside the City of Chicago, are hereby DENIED and as to the party and its candidates for Cook County Commissioners outside the City of Chicago is GRANTED, in conformity with the findings attached hereto and made a part hereof DATED, at Chicago, Illinois this 29th day August, 1990.

/S/ Stanley T. Kusper, Jr.

STANLEY T. KUPSER, JR., Chairman

/S/ Ernesto D. Borges

ERNESTO D. BORGES, Public Member

Concurring in Part and Dissenting in Part:

/S/ Aurelia Pucinski

AURELIA M. PUCINSKI, Member



## COOK COUN'IY OFFICERS ELECIORAL BOARD CONSOLIDATED OPINION

### BACKGROUND

These cases concern objections to various petitions filed by candidates of the Harold Washington Party for election at the November, 1990 General Election. The Harold Washington Party ("HWP") filed as a "new" political party under the provisions of Article 10 of the Election Code.1 HWP filed candidates for County Board President, Assessor, Treasurer, Commissioners of the Board of Appeals, Superintendent of the Educational Serice Region, State's Attorney, Clerk, Sheriff, County Commissioner and Commissioners of the Metropolitan Water Reclamation District.

Dorothy Reed, Valerie Sutton, Patton Feichter, Ervin Ricks and David Barerra filed objectiom to these candidates pursuant to §10-8, charging that the HWP petitions lacked the requisite number of signatures and that they otherwise &iled to meet the comtraints of Article 10.

This Board is constituted of the County Clerk, who serves as Chairrnan; the Clerk of the Circuit Court and the State's Attorney or an Assistant State's Attorney designated by him. Becausc the incumbent State's Attorney, Cecil Partce, would be running against Janice H. Robinson, a challenged HWP candidate, Partee recused himself from the Board, as required by §19. The statutorily authorizcd substitutc members, Treasurer

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[1]Unless otherwise specified, all statutory references arc to the Illinois Election Code, Ill.Rev.Stat. (1989) ch. 46.

Edward Rosewell and Sheriff James O'Grady, are also candidates for re-election and were likewise disqualified. The Chief Judge of the Circuit Court, the Honorable Harry Comerford, then appointed attorney Ernesto D. Borges, Jr. as a public member of the Electoral Board.

The Board met on August 14, 1990, and thereafter to comider the objections. Since most of the objections were of a legal, rather than factual, nature, they were determined by the Board's decisions on the candidates' motiom to dismiss. The Board made oral rulings on some of these issues as they were presented on a daily basis. Due to the likelihood these cases will be appealed on judicial review, and because some of the issues raised represent new advances in electoral jurisprudence, we have issued this opinion detailing the Board's reasoning for these rulings.

## I

## DISQUALIFICATION OF THE ELECTORAL BOARD

The HWP first suggests that the Board should be disqualified because its members are "interested" in the litigation.[2] In support of this motion, HWP submitted an unverified document labeled "Respondent Harold Washington Party's Objection to the Composition of the Electorial [sic] Board for [sic] Cook County." The objection names various democratic officials who, it is allegcd, oppose the HWP. The objection feebly attempts to link two members of the Board, who are elected democratic officials, with the anti-HWP cornments of these officials. The objections conclude with a one-sentence

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[2]HWP asked the Board to transfer this cause to the State Board of Elections. There is no statutory authority to trarsfer arl aaion that, pursuant to the Election Code, must be heard before this Board.



declaration that "It is axiomatic that fundamental Due Process and Equal Protection are denied petitioners[3] because the County Officers Electorial [sic] Board and it's [sic] members are interested parties in the instant litigation." The HWP does not direct the Board's attention to any relevant case law or legal authority to support this claim.[4]

The Board is acutely cognizant of the serious nature of the objections and the great public interest in them. The Board is, as always, aware of its sworn duty to uphold the law and constitutions of the United States and State of Illinois.

However, the statutes clearly designate certain officials as members of the Electoral Board. Section 10-9 permits a board member to step down in circumstances where "any member of the appropriate board is a candidate for the office with relation to which the objector's petition is filed". That statute also provides for substitution of the dismissed member.

This issue was raised in *Ryan v. Londek*, 111 Ill.Dec. 97, 512 N.E.2d 1 (1987). In *Ryan*, the Board contained persons who were running on the same new par slate as the candidate. The Appellate Court held, although a majority of the Board were party members, the composition of the Board did not deny the objector due process, since judicial review of the Board's decision was readily available, and since the legislature failed to provide for recusal of members for any reason other than that specified in the statute.

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[3][Footnote by the Board]. The Board presumes that the word "Petitioners" is meant to refer to the HWP candidates, who are actually respondents in this litigation.

[4]Moreover, in these circumstances, the right to an impartial judge implicates only the right to due process of the law, rather than equal protection.

The *Ryan* board contained persons who were actually running on the same new party slate as some of the litigants. This Board contains no such persons, and the link urged by HWP is considerably more tenuous than the link of the Ryan Board to the litigants, which was found not to violate the candidates' due process rights. Thus, the HWP's motion to disqualif the Board is denied.

## TIMELINESS OF FILING OF THE OBJECIIONS

The HWP next moved to strike and dismiss the objections on the basis that they were not timely filed. It is well settled that absent a timely-filed objection, the nornination papers are presumed valid and the candidates' names shall appear on the ballot. §10-8.

Section 10-8 specifies that the objections must be made in writing 4ithin five business days after the last day for filing the norninating papers. The HWP filed their petitiom on the last possible day, Monday, August 6, 1990. HWP contends that five business days after August 6 was Saturday, August 11, 1990. The objections were not filed until Monday, August 13.

In support of its position, HWP cites *Mierswa v. Kusper*, 121 m.App.3d 430 (lst Dist. 1984). Micrswa filcd her objections on the Monday following the Clerk's adrriinistrativcly sct Saturday deadline. The Clerk refused to convene the Electoral Board o hear her objcctions, contending that the objections were not timely filed since his office was open on Saturday. Mierswa prayed for a writ of mandarnus cornrnanding the Clerk to convene the Board to hear her objections. The Appellate Court found that the objections were not timely filed, since the Clerk was required by



law to keep his office open to noon on Saturday--precisely the position urged by the HWP here.

However, *Mierswa's* reach has been limited by a legislative response to this commonly-litigated scheduling quandary. Just last year, the General Assembly passed Public Act 86-873, which defines "business day" as "any day in which the office of an election authority, local election official or the State Board of Elections is open to the public for a minirnum of 7 hours." That Act also clarified the computation of the . e for election activities by specifying that if the last day for doing an act required under the Election Code falls on a Saturday, the deadline moves to the following Monday.s §1-5. Since the Clerk was not open for 7 hours on August 11, 1990, but was open for 8 hours on August 13, the last day for filing objections to the HWP petitions was August 13.6 HWP's motion to dismiss for failure to file the objections on time is denied.

## III

## USE OF THE NAME HAROLD WASHINGTON PARTY"

The objectors claim that the candidates cannot use the name "Harold Washington Party" because it is an established political party in the City of Chicago. This objection is made against all petitions filed by the HWP for county, city, suburban and Water Reclamation District officcs.

The Board takes administrative notice of the fact that Timothy C. Evans formed

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[5]Assuming, of course, that the Monday is not a holiday.

[6]We also note that the election calendars published by the Chicago Board of Election Commissioners, the Cook County Clerk and the State Board of Elections all designate August 13 as the last day for Sling objections.

the Harold Washington Party for his candidacy for Mayor of Chicago in 1989, and that Evans received more than 5% of the vote in his unsuccessful effort. Thus, pursuant to §10-2, the Harold Washington Party became, and is presently, an established political party in the City of Chicago.[7]

Section 10-5 prohibits new political party petitions for nomination from bearing the same name as, or including the name of, any established political party as defined in Article 10. The obvious purpose behind this prohibition is to prevent persons who are not affiliated with a party from "latching on" to the popular party name, thereby promoting voter confusion and denigrating party cohesiveness.

When the HWP became established in the City of Chicago, Evans, as the candidate of the party, was eligible to select party committeemen as were "necessary for the creation of a provisional party organization and provisional managing committee of the party." §10-2. These committeemen serve until the next primary election at which established political party committeemen are elected.[8] Evans testified that he has not as yet, appointed any such committeemen, but that he, as candidate, authorized the HWP candidates to use the party name.[9]

[7]The Board notes that the municipality, the City of Chicago, is territorially different from the Cook County Board District consisting of that part of Cook County lying within Chicago (m.Comt. (190) Art. VII, § 3(c).) The City of Chicago includes territory within DuPage County. However, for the Board's purposes, the distinction is not relevant.

[8]In fact, several persons attempted to run as HWP ward committeeman candidates in the 1990 primary. Objections were filed to their candidacies by no less than Mr. Evans, who contended that ward committeemen could only be elected in the next "presidential" election year, or 1992. The Appellate Court agreed, and the candidates were stricken from the 1990 ballot.

[9]The Board specifically finds that Evans, pursuant to 10-2 has no



The Board believes that the purposes of the statute, to stop "party stealing", and confusion are important ones. The Board was concerned that confusion would exist if the Chicago HWP was indeed, not the same as the "new political party" in the County, named the HWP. A question that needed to be resolved was whether the new HWP was one in the same as the Chicago HWP involving the same people. Further, the Board finds that the prohibition of §10-5 does extend to the county HWP candidates now before this Board, since the HWP is an established party as defined by Article 10.[10] A strict reading of the statute would have the constitutionally suspect effect of stifling the creation of a new major political party which starts in a small jurisdiction and then attempts to grow across the state. Such a narrow reading would unduly burden the candidates' rights to freedom of association. Balancing the candidates' rights against those of the state in ensuring the integrity of the electoral process required the Board to inquire as to the legitimacy of the connection between the county HWP and the established Chicago HWP.

Evans' testified that the County HWP was granted permission by him (as the only candidate of the Chicago HWP party) to use the party name as an "official" branch of the Chicago HWP. Although Evans is not the statutory party chairman he is the orlly person empowered by the Election Code to act in any official capacity for the HWP.

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authority to act as *Chairman* of the HWP since there is no statutory authority for such designation until committeemen are appointed or elected and then elect a Chairman to lead the newly established political party.

[10] However, Chairman Kusper believes the 15 prohibition does not extend to the newly formed HWP since it is forming "Countywide" and not within the same political subdivision (City of Chicago) as the established HWP.

time, allowed to act as specified above for the party. Evans testified that he gave permission for use of the narne prior to the county HWP petitions being circulated and is the only person to testify in these regards.

The objectors' reliance on *Ballentine v. Bardwell*, 132 Ill.App.3d 1033, and *Doty v. REP Party*, 97 Ill.App.3d 316 is misplaced. In neither case was the new political party which adopted the name of an established party merely an expansion of the existing party into a different jurisdiction. In each case, the new party was attempting to form in the same jurisdiction as the existing party. Here, the evidence demonstrates that it is the same HWP which is reaching out to expand into new political territory. Since the purpose of the statute is to protect the existing party and its supporters against nonsupporters from borrowing its goodwill, the statute has no bearing here.

We have considered the affidavits of Nancy Jefferson and David Reid and find them to be of no evidentiary value, since neither person was a candidate or official of the HWP as designated by statute.[11]

Thus, the motion to dismiss the objection that the name "Harold Washington Party" could not be used by the candidates, is granted.

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[11]State statutory restrictions on political party organization are suspect as they unduly burden the party members' freedom of association rights. San Francisco Coun Democratic Committee v. Eu, 826 F.2d 814 (9th Cir. 1987), afd, 109 S.Ct. 1013 (1989). However, Illinois grants these party oflcials certain public authority, thus legitimizing the minimal structural framework established by Articles 7 and 10 of tbe Election Code. Kluk v. Lang, 12,5 I11.2d 306 (1989).



## IV

## THE DUAL CANDIDACY OF R. EUGENE PINCHAM, SR

R. Eugene Pincham, Sr. is a former Circuit and Appellate Court judge who resigned from the court to run for President of the Cook County Board in the March, 1990 democratic primary. Pincham ran also for Cook County Commissioner to be elected from inside Chicago.[12] Pincham lost for President to Richard Phelan, but did win one of the ten nominations for a Chicago board seat.

Pincham is now running for Cook County Commissioner as a candidate of the Hwp.[13] Section 10-2 of the Code states:

> A candidate for whom a nornination paper has been filed as a partisan candidate at a primay election, and who is defeated for his or her nornination at the primary election, is ineligible for nomination as a candidate of a new political party for clection in that general election.

The objectors charge that since Pincham lost his bid for President, he is barred from running for Commissioner. At first glance, the statute indeed appears to prohibit party-switching between the primary and general elections. However, the statute is commonly referred to as a "sore loser" statute,[14] and was enacted in response to the

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[12]A dual candidacy for President and Commissioner is exprcssly permitted by Ill.Const. (1970) Art. VII, § 4(b).

[13]We decline to speculate on the legal effect of Pincham's simultaneous candidacy for the same office on two different party tickets, a practice seldom seen in American politics (except in the State of New York)and unprecedented in minois. We note that the objectors merely charged that the "sore loser" clause of §12 prevented Pincham from running as a new party candidate.

activities of John Nimrod, an incumbent republican state senator who lost the 1982 primary and ran undaunted to keep his senatorial seat as the candidate of the 'axpayers for Nimrod" party. The state may constitutionally prevent a candidate from having more than one bite at the same apple. It may also constrain one's political activities to one political party for one season. Whether minois law prevents Pincham, under e unusual circumstances, from running for Commissioner as a HWP candidate, is question faced by this Board.

Pincharn won his primary for county comTiissioner and now wishes to switch parties. The statutes contain no prohibition against such conduct.[15] In our view, Pincham's loss for President should not bar hirn from seeking a commissionership under the HWP label. The language of the statue specifically refers to one who is defeated for "his or her nomination" at the primary, lending credence to HWP's argument that the statute is meant only to "lock-out" the sore loser from running for the precise oflce he lost at the primary. The legislative history of the statute supports this conclusion as well.

Finally, we note that when an election law is unclear, the benefit of the doubt must be given to the candidate. *Merz v. Volberding*, 94 Ill.App.2d 111 (1981). If the legislature had meant to prohibit party swiiching in the

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[14]For an exhaustive constitutional analysis of "sorc loser" statutes and "party switching" prohibitions, see Citizens for Moore v. Clicao Board of Elecion Commissioners, 599 F.Supp. 662, question certified 781 F.2d 581, ccrtified question declincd to be answered 94 Ill.Dec. 69, opinion after certed question declined 794 F.2d 1254, on remand 665 F.Supp. 1334, afPd 845 F.2d 144 (1989).

[15]In fact, this is precisely what Adlai Stevenson did in 1986, when he withdrew as the democratic norninee for Governor and ran undcr the Illinois Solidarity party label.



unusual manner used here, it could have done so with language sufficiently clear to put the candidate on notice of the activities which are prohibited. Pincham won his nomination for county commissioner. The statutory language regarding a candidate who is defeated thus only would apply to his loss for President. We find that his past candidacy for President is not relevant to the sore loser statute and that it is thus not a bar to his candidacy.

Thus, HWPs motion to dismiss the objection to Pincham's candidacy on this ground is granted.

## V

## THE MINIMUM SIGNATURE REQUIREMENTS

Since HWP desired to run candidates not only for county-wide offices but for county commissioners from the two county board districts as well, and for ComIlussioners of the Metropolitan Water Reclamation District, it utilized the "component" form of nominating petition. Section 10-2 requires that such petition consist of separate components for each district from which an officer is to be elected. Each component must be circulated only within a district of the political subdivision involved and signed by electors who reside therein. Further, each sheet of the petition must contain a complete list of the candidates for the at large positions and those from the particular district. Each district component must contain the signatures of not less than So of the voters who voted at the next preceding

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[16]In this case, that is the November, 1988 election for county offices.

[17]That requirement is lo of the statewide voters, or 25,000, whichever is less. For this election, the 25,000 figure is less and is thus applicable.

regular election in the jurisdiction[16]. Further, the entire petition for County-Wide Candidate must be signed by not less than So of the voters who voted at the next preceding regular election in the entire junsdiction.

In a large county such as Cook, this So signature requiremcnt works out to be considerably larger than that required of statewide candidates.[17] Such an illogical scheme was struck down in Socialist Workers Pary v. Board of Elections, 440 U.S. 13 (1989). In response to that decision, the legislature amended §10-2 to provide that if the local requirement exceeds the state requirement, the latter will govern, and local candidates need only collect what is required of the state candidates. Here, that means that the HWP candidates needed 25,000 signatures on each component and a total of 25,000 for their county candidates.

HWP filed approximately 44,000 signatures on the county/city petitions and only approxirnately 7,800 on the county/suburban component. The candidates for Commissioner of the Metropolitan Water Reclarnation District had approxirnately 8,000 signatures on their component. While the 44,000 signatures on the county/city component is sufficient alone to support both the city candidates and the county c ndidates, the objectors charge that the failure to include enough suburban signatures on the suburban component is fatal not only to the suburban candidates but to the rest of the ticket as well.

HWP responds by requesting that the Board count the excess city signatures toward the suburban total. The Board cannot do this, since the city signers did not petition to norninate the suburban candidates. Only persons residing in the suburbs may nominate those candidates. HWP also urges the Board to find the suburban petitions valid because the 7,800 signatures demonstrate the "modicum of support" required by casc law.



The Board finds that the 25,000 signature requirement for suburban candidates is appropriate, ince there are over 1,000,000 voters in suburban Cook County, and since the HWP candidates were not tested in a primary election.[18] The fact that 44,000 signatures were collected in Chicago, which only has slightly more voters than suburban Cook, supports the Board's position that the 25,000 suburban requirement would be attainable if the HWP had a modicum of support in that jurisdiction a fact which the HWP has not shown.[19]

We further find that the deletion of the suburban component and/or the Metropolitan Water Reclamation District component is not fatal to the remainder of the ticlcet. The statute is silent on the implementation of the objector's suggested draconian penalty against a party which fell short in it's attempt to field suburban-only candidates and Metropolitan Water Reclamation District candidates, but which demonstrated enough support to qualify on the county and city ballots nonetheless. Such an action would disqualify HWP from the city and county ballots for which it othene fulfilled all statutory requirements. The objectors have not directed the Board's attention to any state interest that would be furthered by such a penalty, thus adding credence to the Board's concern that disqualification of HWP merely for failure to meet the suburban and/or Metropolitan Water Reclamation District requirement would be constitutionally infirm.

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[18] The signature requirements for new political parties are significantly higher than for established parties, because new parties automatically gain a place on the general election ballot for which the established candidate had to fight in a primary.

[19]Further, the Electoral Board has no statutory authority to alter or vary from the rninimum signature requirement as set forth in thc Elcction Code. Thc question of what is a minimum showing of support (if 25,000 is too much) reposes in a court of competent jurisdicton.

The motion of the objector to find the nomination papers of Robert E. Brooks, Jr., Mello Sam H. Clorat Judy Marie Hawthorne, Chester LeSuret Celia Duncant Don C. Passmorc, Jr. and Bobbie J. Srnith as candidates for thc Cook County Board of Commissioncrs to be elected from outside thc City of Chicago insuficient is sustained.

The Board grants the motion of the HWP to strike and dismiss the objection that the remainder of the slate must fall along with the suburban candidates.[20]

Further, as noted above, the HWP candidates for the Metropolitan Water Reclamation District failed to file the 25,000 required signatures. The MWRD petitions contain only about 8,000 signatures on their face. Assuming that the MWRD is includable in the "component" petitions described above, the same analysis applies as did for the insufficient suburban signatures. Since the petitions demonstrate on their face the candidates' failure to meet the statutory requirement, the objector's motion to find the nomination papers of Jefferey V. Coleman, Belgee L. Faulkner and Darnell Fourte insufficient is sustained.[21]

## VI

## ALLEGATIONS AS TO SPECIFIC SIGNATURES (THE "BINDER CHECK")

Having determined that the MWRD and suburban petitions fail to contain a sufficient number of valid signatures, we turn to the remaining

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[20] In Anderson v. Schneider, 167 Ill.2d 165 (1977), the Supreme Court allowed the entire slate township candidates and the party name to remain on the ballot after one of the members of the slate was removed by an Electoral Board. Justice Dooley, writing for the majority, found that the sanction of removal of the party name and/or candidates was not necessary to protect the integrity of the electoral process.

[21] The attorney for the objector withdrew the allegations which relate to the unsufficiency of individual signatures.



city/county petitions.

The objectors filed objections to all 44,000 city /county HWP signatures on the basis that the signatures were not signed in the voters' own proper persons and that the signers were not duly registered voters. The objectors filed 6,000 appendix-recapitulation sheets corresponding to the sheets of the HWP petitions, on which as "X" was marked in each box corresponding to those allegations. In fact, the Board finds from the evidence presented that Appendix-Recapitulation sheets were photocopies from a "master sheet."

The objectors' contention that every one of the signatures filed by the HWP was invalid strains credulity. Even in the most blatant cases of petition fraud[22], some signatures will be valid. The candidates themselves can be presumed to have signed their own petitions.

The statute governing this Board provides that the objector's petition shall "state fully" the nature of the objection. The Electoral Board then must take up the question as to whether the petitions are in proper form. The Board has the power to subpoena witnesses or evidence, and the Chairman must issue subpoenas upon request of any party for the production of relevant documents or persons. The statute explains in detail how the subpoena is enforced in cases of non-compliance.

The Board also must adopt rules of procedure governing the introduction of evidence. This Board's long-established rules provide that a "binder check" may be conducted to determine the validity of allegations such as forged signatures or nonregistered signers. The binder check takes place at the office of the election official having custody of the relevant

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[22]This Board is well-versed in identification of such schemes. *See, e.g., Canter v. Cook County Officers Electoral Board*, 170 Ill. App. 3d 364 (1988).

governmental records, and each side may monitor the election clerk's review of the materials and report to the board as to the validity of the objections. The partyies may then present additional evidence to the Board to refute the clerk's suggested findings.

The binder check procedure is a convenient way of disposing of numerous individual objections while permitting the Board to hear other matters in a limited time frame. It exists only because of the cooperation of the Cook County Clerk and the Chicago Board of Election Commissioners, neither of which is obliged to devote its staffs to such activities at the request of this Board. Both agencies have traditionally cooperated in binder checks because the procedure is a more efficient way to dispose of the objections than by subpoenaing the documents individually for inspection in the Board.

However, this Board has hesitated to make the binder check procedure into a "fishing expedition" for objectors who have failed to do their homework.[23] The statutory scheme provides that the candidates' nomination papers are deemed valid unless proved otherwise. The Board has declined to use its discretion to order a binder check when the Board believes that the objections may have not been compiled with the requisite degree of care or precision.[24] The Board understands that even the most carefully researched objections will often prove untrue. However, the Board must hold the objector to some standard or burden of proof so that the candidates are not improperly burdened with having to defend against

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[23]Member Pucinski, although concurring in this part of the decision, additionally feels a stricter rule should be considered in the future requiring a higher standard of proof necessary to allow a binder check.

[24] *See, e.g., Objections of Jessie B. Hoskins to the Nominating Papers of Cardiss Collins*. 85 COEB-RC 3.



these "fishing expeditions".

The HWP moved to dismiss the signature allegations on the basis that they were fraudulent. The Board noted the extensive nature of the objections and the apparent similarity to all the objections, along with the fact tha every single name was objected to for the same reasons. Consequently, the Board ordered that an evidentiary hearing be held to demonstrate how the objections were researched. The objectors' petition states that a 15% sampling was done of the HWP petitions, resulting in 53% of those signatures being invalid. In fact, there are no provisions for sampling certain signatures and then expanding a "likely" result from the sampling. The evidence presented by the objectors was insufficient for the Board to find a reasonable likelihood that a binder check or other manner of extensive evidentiary hearing would bring HWP below the 25,000 requirement.

The objectors' only witness on this point was Mrs. Bonnie McGuire, as aldermanic assistant. Mrs. McGuire was a credible witness. She testified that she had extensive experience in petition challenges, and that she reviewed a small sampling of the HWP petitions against February, 1990 poll sheets.[25] She also testified that no signatures were checked against the permanent binder cards to determine if the signature was not, in fact, the signature of whom it purported to be. She prepared these objections and tendered them to a Mr. Michael Carey and Mr. Ray Simon. Mr. Carey instructed her to insert additional objections so that every

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[25] While these poll sheets do nto represent the current registrations of voters could have moved, died or registered since February, 1990, they are of some relevance to the Board's consideration whether a good faith effort was made to ascertain the validity of the signatures objected to on the basis that the voter was not registered.

signature was objected to under the designation "Not Signed In Own Proper Person". Mrs. McGuire rightfully questioned this practice, since her limited, though thorough review had only resulted in the smaller number of objections she listed. Mrs. McGuire testified that Mr. Carey insisted that the additional signatures should be objected to so as to "preserve the objection for the record".

Mrs. McGuire also testified that she met the objectors only briefly at Raymond Simon's office. She explained her research to one of the objectors. Some of the objectors were not even present. Obviously, there was no way for these objectors to have obtained the information relevant to their objections other than through Mrs. McGuire. However, these objectors swore under oath that the objections were true. This lack of knowledge of the nature and accuracy of the objections gives the Board even more reason not to order a binder check.

Taking the only evidence presented by the Objector in its best light, produces only 2,810 specific objections.[26] Thus, the Objector attempts to expand from the 2,810 specific signature objections to a blanket objcetion including all 60,000 signatures.[27]

The Board sustains the objection in ¶5(s) of the objectors' petition to sheet 4063 since it is a non-conforming sheet, it being a page of a MWRD petition inserted in the county/city component and is invalid; the objection in ¶5(m) that a certain sheet did not bear the signature of a notary public and the objection in ¶5(r) as to sheet 3373 being a suburban/county

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[26] There were approximately 2,500 specific Objector's Exhibit A (Ex. 5 at the hearing); 120 objections relating to circulators; 190 objections to specific signatures from the Objector's Petition in chief.

[27] This includes suburban and MWRD signatures.



sheet inserted in the city component, are sustained.

The Board overrules the objection in ¶5(n) that the absence of a notary seal invalidates certain sheets. The Board finds that the sheet appears to have been duly sworn to before a notary public, and that the insertion of a seall is not as crucial to the integrity of the electoral process as the catual oath. *Bowe v. Board of Elections*, 79 Ill. 2d 469 (1980). Further, the Board overrules the objection in ¶5(o) since none of the petition sheets were challenged in the appendix recapitulation under the heading "Circulator Did Not Appear Before Notary".

The objectors claim that the sheets done by several "super circulators" contain a pattern of fraud that invalidates the sheets in their entirety.[28] No witnesses were presented, except for Mrs. Bonnie McGuire, who testified that in her experience it would seem to be "impossible" for a circulator to circulate as many sheets as stated in paragraph S(q). No further evidence was presented by the objector who rested his case after the Chairman of the Board repeatedly offered the opportunity to proceed and present evidence through witnesses or documents or othenvise. The objector presented no evidence which would substantiate the allegations or shift the bwden to arlswer to the HWP. In fact, the HWP had all of the questioned circulators, except one, present at the hearing ready to testify if the Board had found the objector had established a prima facia case, thus shifting the burden to the HWP to present a defense.

The Board further finds that even if the "incredible" circulator sheets were invalidated, the candidates would still have enough signatures to remain on the ballot. The Board also finds that the objectors failed in

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[28] *See, e.g., Fortas v. Dixon*, 122 Ill.App.3d 699 (1984); *Huskey v. Municipal Officers Electoral Board*, 156 Ill App.3d 201 (1987).

their burden to show a reasonable likelihood that a binder check would result in the invalidity of the petitions.

The Board also notes that the objectors have not requested that any records be subpoenaed from either the County Clerk or Chicago Board of Election ComITiissioners to support the validity of their objections. Thus, the objectors' request for a binder check is denied.[29]

[29] This ruling moots the candidates' objection to the Board's binder check rules which provided that objections would be sustained as to signatures for which binder cards could not be found.



## VII

## THE NECESSIIY TO INCLUDE JUDICIAL CANDIDATES ON THE SLA[illegible][30]

Section 10-2 of the Election Code provides that the new party petition must contain a complete list of the names of candidates of the party for "all offices to be filled in the political subdivision". This has been known in election law circles as the "complete slate requirement."

Having survived the objectors' challenges thus far, the HWP city/ county candidates now meet the complete slate requirement, the hurdle most troubling to the Board.

The objectors charge that the HWP did not file a complete slate for offices within the political subdivision of Cook County because it did nc: file candidates for any judicial office to be elected in Cook County.[31] However, there is nothing in the record as to whether a slate of judicial candidates were, or were not, filed with the State Board of Elections. Additionally, since there are no new judgeships on the November, 1990 ballot[32], all judgeships cited by objectors are to fill judicial vacancies.

[30] Member Pucinski does not join in this section of the opinion. For the reasons stated in her dissent, she would sustain the objection that the HWP did not file a complete slate for failure to include judicial candidates and find the nomination papers of the county and city candidates invalid.

[31] The objectors correctly point out that there are judgeships to be elected county wide, citywide within Chicago and suburb-wide, each of which matches a component of the petition. However, the suburban issue has been mooted by our decision above, and the analysis of the city judicial slate vis-a-vis city commissioner candidates is identical to our analysis herein of the county judicial slate issue. Thus, we adopt the county analysis as it relates to city candidates accordingly.

[32] The one additional judgeship for which nominations were made at the primary was invalidated by the decision of the Illinois Supreme Court in *CBA v. State Board of Elections*, No. 69823, (July 2, 1990, opinion

The judgeships at issue are unquestionably "offices". The question is whether they are to be filled in the same "political subdivision". The Election Code defines a "political subdivision" as any unit of local government, or school district in which elections are or may be held." §1-3(6). The judgeships are elected not from the County of Cook as a unit of local government, but rather from the Cook County Judicial District[33], which is coincidentally coterminous with Cook County.

The Board finds that the legislative intent behind the complete slate requirement is to require a complete slate for all similar offices which run as a group on a recurring basis. In this fashion, the advantages of a new party, rather than the detriments of independent candidacy (such as lower signature requirements) are conferred upon only those who demonstrate cohesiveness and support equivalent to that already demonstrated by the existing political parties.[34]

Moreover, judicial offices are state offices rather than county offices. Ill.Const. (1970) Art. VI. Section 10-2 of the Election Code distinguishes between counties and judicial districts in this context. That statute states that any group of persons desiring to form a new political party throughout any judicial district shall file with the State Board of Elections and that any such group desiring to form a new political party within any county shall file such petition with the County Clerk.

It is logistically impossible for the HWP to comply with the complete slate requirement as it is interpreted by objectors. Candidates for

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modified on denial of rehearing, August 22, 1990), and upheld on petition for review as to the issue of the new judgeship in its revised opinion issued August 22, 1990.

[33]So created by Ill.Const. (1970) Art. VI, 2.

[34]*See, e.g., Anderson v. Selmeider*, 67 Ill.2d 165 (1977) (dissenting opinion).



judge must file petitions with the State Board of Elections in Springfield. The HWP county candidates filed with the County Clerk in Chicago.

Thus, the motion to strike and dismiss the objection that the HWP failed to field a complete slate under §10-2 is granted.

## CONCLUSION

Since the objectors have failed to demonstrate cause to find the nomination papers of the HWP candidates for county office or city commissionerships invalid, the objections as to those candidates are overruled and those candidates' names as well as the party designation, shall be placed on the November, 1990 general election ballot.

Since the objectors have demonstrated cause to find the nomination papers of the HWP candidates for suburban commissionerships and Metropolitan Water Reclamation District offices invalid, the objections are sustained, and those candidates' names and offices shall not be placed on the November, 1990 general election ballot.

Dated this 29th day of August, 1990 at Chicago, Illinois:

COOK COUNTY OFFICERS ELECTORAL BOARD

/S/ Stanley T. Kusper, Jr.
Honorable Stanley T. Kusper, Jr., Chairman

/S/ Ernesto D. Borges, Jr.
Ernesto D. Borges, Jr., Member

Concurring in Part and Dissenting in Part:

/S/ Aurelia M. Pucinski
Honorable Aurelia M. Pucinski, Member[35]

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[35] I dissent as to Parts III and VII of the opinion and accordingly also to the Conclusion.

**Member Pucinski, dissenting as to Parts III and VII of the Board's opinion and as to the Conclusion:**

**Dissent as to Part III (Use of The Name "Harold Washington Party")**

I concur with the Board's entire opinion, except as to Parts III and VII, and accordingly dissent from the conclusion. I respectfully dissent from that portion of the Board's decision granting the candidates' motion to dismiss the allegations regarding the use of the name "Harold Washington Party".

The Harold Washington Party became an established party in the City of Chicago in April, 1989, when Timothy C. Evans received more than 5% of the vote for Mayor in that election. Section 10-5 of the Election Code plainly states that the name of a new political party shall not bear the same narne as, nor include the narne of any established political party as defined in Article 10. As the majority indicated, the plain purpose of this statute is to prevent voters from being misled into believing that the new political party is officially and legally linked to the previously-established "new" political party.

The Election Code contains a complicated scheme governing the formation and continuation of political parties. This plan protects citizens from mistakenly believing that certain candidates espouse the views of parties to which they are not affiliated, and further promotes political continuity and party cohesiveness.

In my view, the testimony of Timothy C. Evans is of no value in determining the propriety of the use of the name "Harold Washington Party". While Mr. Evans was the only candidate of the HWP, the only



power he earned by that distinction was the ability to appoint interim party officers. §10-2. Those officers, in turn, not Mr. Evans, have the powers conferred by law upon the established party committeeman. These powers include the power to manage and control the affairs of the new party and such customary powers as conferring the party's endorsement on qualified candidates. Mr. Evans failed to appoint such provisional committeemen so that such power could be lawfully exercised. Having failed in this first step to formalize an established political party structure, the HWP and Evans attempt to argue some type of constitutional deprivation if the HWP is not on the ballot after the "blessing" by the person who was the only candidate of the party but has no official or statutory designation. The established Chicago HWP must take the necessary statutory steps to organize before any one person can proclaim themselves the "chairman" or party leader.

The language of the statute is clear. The name of the new party **"shall"** not include the name of an established party. The statute classifies this as a mandatory **"prohibition"**, not merely as a directory request. In fact the word "shall" in this very section has been held to be mandatory by the Appellate Court. *Serwinski v. Board of Election Commissioners*, 156 Ill. App.3d 257 (1987). Thus, I would find that the candidates may not use the name "Harold Washington Party". The courts have taught us that this statutory prohibition may be enforced simply by striking the candidates' party label and permitting them to run with no label. *Ballentine v. Bardwell*, 132 Ill.App.3d 1033 (1985). I find this to be the appropriate remedy here, and would deny the motion to dismiss this objection and find the nomination papers to be partially invalid by striking the party name.

**Dissent as to Part VII**

**(The Necessity to Include Judicial Candidates On The Slate)**

I would sustain the objection to the HWP county and city candidates that failure to include judicial candidates violated the complete slate requirement. Thus, I would find these nomination papers invalid as well.

Section 10-2 of the Election Code requires that where a petition to form a new political party within a political subdivision is filed, it must contain a component petition for each district contained in that subdivision from which an officer is to be elected. Cook County is both a political subdivision and a unit of local government. Ill.Const. (1970) Art. VII, §1; Election Code § 1-3(6).

Section 1-3(14) of the Election Code defines "district" as including "judicial districts" and "judicial circuits" . The HWP petitions fail to contain certain candidates to be elected at-large by the voters of all Cook County and by no other voters--the judicial candidates. Similarly, the Chicago component fails to list Chicago-only judicial candidates, although precisely the same voters will select those candidates.

Article VI of the Illinois Constitution provides that Supreme, Appellate and certain Circuit Court judges shall be elected on the entire County of Cook.

The Supreme Court's most recent review of the complete slate requirement, *Anderson v. Schneider*, 67 Ill.2d 165 (1977), lends support to this interpretation. Although the court permitted the candidates to remain on the ballot even though one member of the slate was disqualified, both the majority and dissent found that the statute did require that at least a "complete list of candidates" be filed.



HWP argues that since judges serve in a state office, their presence on a complete county slate may be disregarded. This argument is misplaced. The statute plainly calls for a list of candidates for "all offices to be filled in the political subdivision at large". Clearly, judges to be elected in the Cook County Judicial Circuit are such officers. The HWP conveniently fails to focus on pertinent language of the statute which states that persons seeking to form a new political party in a judicial district or in any other district or in any other political subdivision (other than a municipality) not entirely within a single county, must file with the State Board. [Emphasis added]. Thus, the HWP properly filed with the County Clerk. It would not have been a burden to add the names of the appropriate judicial candidates from the appropriate voting district (county wide, city only, suburban only) to the list of candidates on the HWP petitions.

For these reasons, I would sustain the objection and find the HWP nomination papers invalid in their entirety, as to the party. However, the individuals have filed sufficient signatures to remain on the ballot as individuals.

/S/ Aurelia M. Pucinski

Honorable Aurelia M. Pucinski, Member

(2)

No. 90-1126

Supreme Court, U.S.
FILED
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In The

# Supreme Court of the United States

October Term, 1990

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE SMITH,

*Petitioners,*

vs.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES, constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY ILLINOIS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET, constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

*Respondents.*

**Petition For Writ Of Certiorari To The Supreme Court Of Illinois**

## BRIEF OF RESPONDENTS DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, AND DAVID BARRERA IN OPPOSITION

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether the appearance of Harold Washington Party candidates on the ballot for the November 6, 1990 general election in Cook County, Illinois renders this case moot.

2. Whether the Court should decline review because the Illinois Supreme Court decision was based upon independent and adequate state grounds.

3. Whether the statutory requirement of 25,000 suburban nominating signatures for a new political party ballot access was reasonable and constitutional and served compelling state interests.

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## OPINIONS BELOW

Petitioners failed to advise the Court of the October 2, 1990 opinion of the United States District Court for the Northern District of Illinois holding that Illinois' statutory signature requirements were reasonable and constitutional. The opinion is set forth in the Appendix at page 1. Petitioners also failed to advise the Court of the April 15, 1991 order of the same United States District Court, dismissing their fraud complaints.

## OBJECTIONS TO JURISDICTION

1. This case is moot because petitioners appeared on the general election ballot on November 6, 1990.

2. The Court should decline review because the Illinois Supreme Court decision was based upon an independent and adequate state ground.

3. The Illinois Election Code's requirement of 25,000 city signatures and 25,000 suburban signatures for the formation of a new political party is reasonable and constitutional and serves compelling state interests.

## STATEMENT OF THE CASE

This case involves the application of the plain provisions of the Illinois Election Code concerning the formation of new political parties.

Harold Washington was a major force in Chicago politics. He was the first African-American to become

Chicago's mayor. He was mayor at the time of his death in 1987. Mayor Washington is revered in Chicago's African-American community. In 1988, Chicago Alderman Timothy Evans formed a city-wide political organization called the Harold Washington Party and ran for Mayor on its ticket in the Special Mayoral Election that followed Harold Washington's death.

On March 20, 1990, petitioner R. Eugene Pincham lost the Democratic primary election for the office of President of the Cook County Board of Commissioners. Mr. Pincham still wanted to run for Board President in the general election and, hoping to capitalize upon Mayor Washington's popularity, tried to create his own "Harold Washington Party."

The Illinois Election Code prohibits a new political party from using the same name as an established political party. The idea is to prevent the obvious confusion that would necessarily result if two political parties used the same name. The Election Code also provides that a new political party seeking ballot access in Chicago and in Cook County must demonstrate support in both areas by presenting nominating papers that contain a minimum of 25,000 signatures ("city signatures") of city residents and another 25,000 signatures ("suburban signatures") of suburban residents.

After full and extensive hearings before the Cook County Electoral Board, the Cook County Circuit Court, and the Supreme Court of Illinois, Mr. Pincham's Harold Washington Party was disqualified because it used the same name as an established party – Mr. Evans' Harold Washington Party – and because its nominating papers



did not contain 25,000 suburban signatures. The United States District Court in Chicago has reviewed the Election Code and found it to be reasonable and constitutional. *See Appendix* at 1.

On October 25, 1990, this Court entered the following order:

> The application for stay presented to Justice Stevens and by him referred to the Court is granted to the extent that the August 29, 1990 decision of the Cook County Officers Electoral Board, No. 90COEB-2, is to remain in effect pending the timely filing and disposition of a petition for a writ of certiorari.

Mr. Pincham's Harold Washington Party appeared on the ballot and participated in the general election. It was resoundingly defeated in the public forum.

## ARGUMENT

### I. THE CONTROVERSY IS MOOT

The core of this litigation was whether petitioners were eligible candidates in the November 6, 1990 general election. That issue is moot. By this Court's order, petitioners were eligible candidates. The election is over. Petitioners' appearance on the ballot and the results of the election cannot be undone. Accordingly, there is no longer any need for the Court to adjudicate petitioners' ballot access.

The *Petition* should be denied because the issues presented are moot.

## II. THE STATUTORY REQUIREMENT OF 25,000 SUBURBAN SIGNATURES FOR NEW POLITICAL PARTY BALLOT ACCESS WAS REASONABLE AND CONSTITUTIONAL AND SERVED COMPELLING STATE INTERESTS.

The judgment of the Illinois Supreme Court was based only upon state grounds. It did not involve any federal question, let alone a substantial federal question. Under these circumstances, the Court has regularly declined review. *See Uhler v. AFL-CIO*, 468 U.S. 1310, 1311 (1984); *Herb. v. Pitcairn*, 324 U.S. 117, 125 (1945).

The Illinois Supreme Court ruled that petitioners violated the Illinois Election Code requirement that a petition for creation of a new political party "[s]hall not bear the same name as, nor include the name of any established political party as defined in this Article." 46 Ill. Rev. Stat. § 10-5. The purposes of § 10-5 are to avoid the perpetration of a fraud upon the electorate, to stem voter confusion, and to prevent splintered parties and unrestrained factionalism. *Stevenson v. State Board of Election*, 638 F. Supp. 547 (N.D. Ill.), *aff'd*, 794 F.2d 1176 (7th Cir. 1986); *Doty v. Representation For Every Person (R.E.P.) Party*, 97 Ill.App.3d 316 (1st Dist. 1981); *Vasquez v. Municipal Officers Electoral Board*, 115 Ill.App.3d 1014 (3rd Dist. 1983); *Ballentine v. Bardwell*, 132 Ill.App.3d 1033 (1st Dist. 1985).

Timothy Evans' Harold Washington Party was and is an established political party in Chicago. It was and is different from R. Eugene Pincham's Harold Washington Party. By choosing the name of an established party, Mr. Pincham directly violated the statute. Mr. Pincham could have avoided the statutory bar by taking a different name



for his party. He chose not to do so and thereby disqualified himself and his party.

The confusion and mischief of two Harold Washington Parties is obvious. Under present circumstances, the established city-wide "Tim Evans" Harold Washington Party and the new city-wide and county-wide "R. Eugene Pincham" Harold Washington Party are separate and distinct political entities, each of which is entitled to run candidates in all ensuing municipal elections for Chicago city officials. Two parties with separate sets of candidates running under the same name is simply antithetical to a free and informed electoral process.

Section 10-5 plays no favorites. It similarly prevents someone from forming another and new Republican Party or another and new Democratic Party and running as a republican or democrat. If Mr. Pincham is allowed to form his own Harold Washington Party and field a slate of candidates, then anyone can form their own Republican Party or Democratic Party and run as a republican and a democrat. This is obviously intolerable. This is precisely the sort of confusion the statute was designed to prevent.

## III. THE STATUTORY REQUIREMENT OF 25,000 SUBURBAN NOMINATING SIGNATURES FOR NEW POLITICAL PARTY BALLOT ACCESS WAS REASONABLE AND CONSTITUTIONAL AND SERVED COMPELLING STATE INTERESTS

The Illinois Election Code requires that, before a new political party may field a slate of candidates, it must file

nominating petitions signed by at least 5% of the voters in each district in which it intends to run.

Pursuant to § 1-3 (14) of the Illinois Election Code, Cook County consists of two political districts: the City of Chicago and suburban Cook County. As applied to Cook County and Chicago, the Election Code essentially requires that the new political party must file nominating petitions with 25,000 city signatures and 25,000 suburban signatures.

Petitioners obtained approximately 7,560 suburban signatures. They therefore failed to obtain the necessary 25,000 suburban signatures required by § 10-2.

Citing *Illinois State Board of Elections v. Socialist Worker's Party*, 440 U.S. 173 (1979), petitioners first contend that a new political party in Illinois need only obtain a total of 25,000 signatures from city or county voters.

Petitioner's legal reliance and analysis are wrong. *Socialist Worker's Party* does not support them. In that case, the Court ruled that, unless there was a compelling state interest, Illinois could not impose a more stringent signature requirement upon new political parties and independent candidates in Chicago than it imposed upon new political parties and independent candidates seeking State-wide office.

In the instant case, the reason for the 25,000 signature requirement *per* district is both clear and reasonable. A 25,000 signature requirement for each district guarantees that, before it is placed on the ballot, the new party must have some support from the voters of that district.



In 1986 (the last election at which Cook County Commissioners were elected), 1,476,370 people voted. 841,085 city ballots and 635,285 suburban ballots were cast. Given this substantial number of votes in both the city and the suburbs, the 25,000 signature requirement is a very modest one. Indeed, petitioners' approximately 44,000 city signatures plainly demonstrate that the 25,000 signature requirement for a district the size of Chicago or suburban Cook County can easily be attained with any sort of political support.

That fact was recognized by the Illinois General Assembly when, following the decision in *Socialist Workers' Party*, the Legislature amended § 10-2 of the Election Code which added the following sentence to paragraph 4 of § 10-2:[1]

> However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition.

Public Act No. 81-926, effective September 11, 1979.

The General Assembly, however, did not amend that portion of § 10-2 which requires the double 25,000 signature requirements at issue in this case. Demanding minimum demonstration of voter support protects the

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[1] Section 10-2 provides that the nominating petition of a new State-wide political party must be signed "by 1% of the number of voters who voted at the last preceding State-wide general election or 25,000 qualified voters, whichever is less."

integrity of the electoral process. The Court has found this to be a compelling state interest. *American Party of Texas v. White*, 415 U.S. 767, 783, n. 14 (1974). As the court explained in *Stevenson v. State Board of Elections*, 638 F.Supp. 547, 553-554 (N.D. Ill.) *aff'd*, 794 F.2d 1176 (7th Cir. 1986):

> One such interest is to prevent splintered parties and unrestrained factionalism. Id. at 735, 94 S.Ct. at 1281. *Anderson v. Clebrezze*, 460 U.S. at 803, 103 S.Ct. at 1577. As has been stated before, the Supreme Court in *Storer* recognized as legitimate the state's goal of discouraging independent candidacies prompted by short-term political goals, pique, or personal quarrel. *Storer* at 735, 94 S.Ct. at 1281; *Anderson*, at 803, 103 S.Ct. at 1577. Splintered parties and unrestrained factionalism may do significant damage to the fabric of government. See the Federalist, No. 10 (Madison). There are further substantial state interests at stake: encouraging compromise and political stability; attempting to ensure that the election winner will represent a majority of the community; and providing the electorate with a ballot that will eliminate voter confusion. *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *Bullock v. Carter, supra*, at 145, 92 S.Ct. at 856.
>
> The Supreme Court decisions in *Anderson supra; Storer, supra; Rosario, supra;* and *Jenness, supra*, all support the position taken herein. Accordingly, the interests of ballot integrity, political stability, and voter representation all reflect legitimate state interests to be advanced by statute.

Petitioners argue that Illinois may not insist upon any showing of support from both districts because to do so would exceed the State-wide minimum. The Seventh



Circuit has twice rejected this argument. *See Bowe v. Board of Election Commissioners of City of Chicago*, 614 F.2d 1147 (7th Cir. 1980) and *Gjersten v. Board of Election Commissioners of City of Chicago*, 791 F.2d 472 (7th Cir. 1986). In *Bowe*, the Seventh Circuit stated:

> The plaintiffs apparently take the position that the *Socialist Worker's Party* case stands for the broad proposition that a state may never impose a higher signature requirement for an office of a smaller subdivision than the requirement imposed for any office of a larger subdivision. We cannot agree.

614 F.2d 1147, 1151

*Bowe* is also instructive for another reason. The requirement that a county-wide new political party must meet a 5% signature requirement in both the city and suburban districts is a proper legislative one to assure that the new party can show:

> a significant modicum of support. . . . Thus substantial minimum signature requirements serve compelling State interests, and the only question is whether the specific percentage chosen serves the State's compelling interests in a reasonable manner.

614 F.2d at 1151

Section 10-2's double 25,000 signature requirement answers *Bowe's* "only question" in the affirmative. It simply requires that a new political party must show "a significant modicum of support" in Chicago and in suburban Cook County. This is reasonable and serves a compelling State interest. Section 10-2 comports with the *Socialist Worker's Party* case and its progeny and should be followed.

*Anderson v. Schneider*, 67 Ill.2d 165 (1977) was properly found by the lower courts to be inapposite. *Anderson* considered the Election Code requirement that a new political party petition must contain a "complete list of candidates." In *Anderson*, the question was whether the ineligibility of one candidate on a new party petition renders all candidates ineligible. *Anderson* held that, when a candidate was ineligible, the eligible candidates would not be punished and their petitions would be honored. In this case, all of the candidates were declared ineligible because they all failed to file the requisite number of signatures.

It is clear, therefore, that both the Supreme Court of Illinois and the United States District Court ruled properly in holding that the signature requirements were reasonable, served compelling state interests and were, therefore, constitutional.

## IV. THE CLAIMS OF FRAUD ARE UNTRUE AND IRRESPONSIBLE

The Court's Rule 15.1 directs respondents "to point out any perceived misstatements" contained in the *Petition for Writ of Certiorari*. Respondents respectfully advise the Court that Mr. Pincham's petition is a piece of fiction.

At pages 7 to 9 of the *Petition*, petitioners state that respondents' objections to their nominating papers were tainted with fraud. The claim is false, reckless, and utterly irresponsible and, even in respondents' formulation, provides no basis for granting the writ.



These very charges formed the basis of a civil action for damages in the United States District Court for the Northern District of Illinois, Eastern Division in a case entitled *The Harold Washington Party, et al. v. The Cook County, Illinois Democratic Party, et al.*, 90 C 5731. On April 15, 1991, after briefing, the District Court decided all factual and legal issues against respondent and dismissed the complaint with prejudice.

Respondents filed six objections to Mr. Pincham's Harold Washington Party nominating papers. Objections 1 to 4 raised purely legal challenges. Objections 5 and 6 challenged the validity of the nominating signatures and requested that all signatures be checked for validity. Respondents' purported fraud occurred in Objections 5 and 6, neither of which were denied by respondents.

Objection 5 alleged that certain signatures were invalid because, for example, the signer was not a registered voter or because the signature was not genuine. Objection 6 provided in pertinent part:

> The Objectors further state that fifteen percent of all signatures to the petitions for the nomination of the Harold Washington Party were examined with the result that 53% of that amount were found to be invalid and contrary to the requirements of the Election Code.
>
> Accordingly, it is clear that the number of invalid signatures to the petitions for nomination of the Harold Washington Party is so large as to demonstrate a conscious disregard of the statutory requirements and demonstrate strongly that virtually all of the signatures to those petitions are invalid and fail to meet the requirements of the Illinois Election Code.

> The Objectors further state that they are submitting – in conjunction with the objections set forth in paragraph 6, as well as in conjunction with all of the objections in this Objectors' Petition – Exhibit A, the contents of which shall be incorporated herein and made a part herein.

In support of Objections 5 and 6, respondents offered the testimony of Bonnie McGuire, Exhibit A to the Objections and certain "Appendix Recapitulated Sheets."

Petitioners' characterization of the testimony of Mrs. McGuire is reprehensible. She did not testify that the challenges were false or that the recapitulation sheets were false. Mrs. McGuire testified that she prepared Exhibit A and the recapitulation sheets, that she personally examined 15% of the signatures on the nominating petitions, and that she found 53% of those examined were invalid for various reasons. Tr. 8/23/90 at 115-117. She further testified that she prepared Exhibit A to the Objections and that it documents her examination and its results. Tr. 8/22/90 at 25-31.

Exhibit A is very specific in its objection to each challenged signature. After reviewing Exhibit A, an attorney, Michael Carey, advised Mrs. McGuire that a separate challenge – "not signed in own proper person" – should be made to all signatures to avoid waiving the right to make more specific objections at a later date. Mrs. McGuire followed Mr. Carey's instructions and prepared blanket objections to all of petitioners' signatures. These objections were made in the recapitulation sheets.

Waiver was a justifiable concern because the Electoral Board has ruled that, if not made, a specific objection is waived, even in the face of clear evidence of a pattern of



false swearing and disregard of the Election Code. *Fortas v. Dixon*, 122 Ill.App.3d 697, 701 (1st Dist. 1984) Board Rule 10 provides that it "will consider only objections and specifications of such objections . . . . " *See Canter v. Cook Cty. Off. Electoral Board*, 170 Ill.App.3d 364, 367-368 (1st Dist. 1988).

Contrary to petitioners' assertion, the Board never found fraud concerning Objections 5 and 6. Indeed, the Board found that "Mrs. McGuire was a credible witness." App. to Pet. for Cert., Ex. D at 17. The Board rejected these objections because it would not accept the "shotgun format" of the recapitulation sheets. Its decision was based purely and simply upon the form of the appendix recapitulation. App. to Pet. Cert., Ex. D at 17.

Petitioners were successful on Objections 5 and 6. No Board or Court took any action adverse to petitioners because of anything having to do with Objections 5 and 6, Exhibit A, or the appendix recapitulation sheets. The contention that petitioners were disqualified on the basis of Objections 5 or 6 is plainly sophistry. Mr. Pincham's Harold Washington Party was ineligible for ballot access because it did not comply with other provisions of the Election Code.

In any event, respondents' challenges were legally made under the Illinois Election Code. 46 Ill. Rev. Stat. §§1-1, *et seq.*; *Fortas, supra; Canter, supra.* Resort to legally-provided procedures is not actionable, whatever the motivation. *Eastern Railroad Presidents Conference v. Noerr Motor Freight*, 365 U.S. 127, 138, 145 (1961); *United Mine Workers of America v. Pennington*, 381 U.S. 657, 669-679 (1965).

In short, the suggestions of fraud have nothing to do with the question of whether or not this Court should grant certiorari. The claims are utterly irresponsible and form no part of this action. In fact, they were litigated and resolved against these petitioners.

## CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| TIMUEL BLACK, OBIE ROBERTS, FANNIE O'BANNON, TERRIE POPE, DONNLEY R. PHILLIPS, and KAREN R. NEAL, Plaintiffs, v. COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO BORGES, individually and in their official capacities as members of the Cook County Officers Electoral Board, CHICAGO BOARD OF ELECTORAL COMMISSIONERS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET; individually and in their official capacities as Members of the Chicago Board of Elections Commissioners, Defendants. | ) | No. 90 C 5529 |

MEMORANDUM OPINION AND ORDER

STATEMENT OF FACTS

Plaintiffs bring this action under 42 U.S.C. § 1983, seeking injunctive and declaratory relief. Plaintiffs are signatories to nominating petitions for candidates to the Harold Washington Party ("HWP"). Those candidates were disqualified from appearing on the ballot for county-wide elections to take place November 6, 1990.

Finding that the HWP had failed to meet certain requirements of the Illinois Election Code, Ill. Rev. Stat. ch. 46, Judge Eugene L. Wachowski of the Circuit Court of Cook County issued the disqualification order on September 20, 1990. Plaintiffs allege that Judge Wachowski's order, and the statutes underlying it, violated their Constitutional rights under the First and Fourteenth Amendments.

Concurrently with this action, the HWP appealed Judge Wachowski's decision to the Illinois Appellate Court. To expedite review, the Supreme Court of Illinois agreed to hear the case directly. Oral arguments there are scheduled to take place on October 3, 1990. Now before the court are plaintiffs' motion for a preliminary injunction and defendants' motion to dismiss. For the reasons stated below, the defendants' motion to dismiss is granted with prejudice.

## MOTION TO DISMISS

The intervening defendants, Dorothy Reed, Valerie A. Sutton, Patton L. Feichter, Ervin S. Ricks, and David Berrera, move to dismiss.[1] They present five grounds in support of their motion: abstention, the Anti-Injunction Act, res judicata, lack of subject matter jurisdiction, and failure to state a claim upon which relief can be granted. Although the first three grounds do not apply, the last two require dismissal of this action, as explained below.

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[1] These defendants, who had successfully challenged plaintiffs' nominating petition before the Circuit Court, were granted leave to intervene at the start of these proceedings.



(1) *Abstention*. Defendants urge the court to abstain pursuant to *Younger v. Harris*, 401 U.S. 37 (1971). But the *Younger* doctrine, which forbids a federal court from enjoining state court proceedings, has no bearing on this action. More relevant are the abstention doctrines expressed in *Pullman*, *Burford*, or *Colorado River*, but none of these cases require the court to abstain here for one principal reason: delay. Where, as here, "the dispute contains an urgent temporal concern defined by the upcoming . . . election," abstention "would merely delay the ultimate resolution of the parties' dispute . . . " *Mintz v. Barthelemy*, 722 F. Supp. 273, 280 (E.D. La. 1989). *See also Badham v. U.S. Dist. Ct. for N.D. of Cal.*, 721 F.2d 1170, 1173 (1983) (no abstention in voting case, where the "dangers posed by an abstention order are particularly evident . . . delay in such cases is particularly insidious . . . "). Given the nature of plaintiffs' action, abstention would be inappropriate.

(2) *The Anti-Injunction Act*. According to defendants, the Anti-Injunction Act, 28 U.S.C. § 2283, compels the court to abstain. The Act prohibits federal courts from "grant[ing] an injunction to stay proceedings in a State Court . . . " That is not what plaintiffs have requested. Rather, they have brought a constitutional challenge to Illinois' election laws, and the Circuit Court's application of them. In any event, actions brought under 42 U.S.C. § 1983 are explicit exceptions to the Anti-Injunction Act. *Mitchum v. Foster*, 407 U.S. 225 (1972). The Act does not afford defendants relief.

(3) *Res Judicata*. Because plaintiffs were privy to the Circuit Court proceedings, say defendants, the doctrine of res judicata prevents them from bringing this suit. Res

judicata precludes the exercise of federal jurisdiction as to any matters raised, or which could have been raised, before the state court. *Allen v. McCurry*, 449 U.S. 90 (1980); *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75 (1984). Plaintiffs here deny being in privity with the plaintiffs who appeared before Judge Wachowski.

Whether or not there is privity is of no consequence.[2] Judge Wachowski expressly declined to consider plaintiffs' constitutional challenges in his order of September 20, 1990 ("The constitutionality of § 10-2 of the Election Code need not be addressed"). Because the Circuit Court did not address the constitutional claims brought by their privies, plaintiffs cannot be barred by res judicata from bringing them here. *Cf. Migra v. Warren City, supra*, at 84 ("In the present litigation, plaintiff does not claim that the state court would not have adjudicated her federal claims had she presented them in her original suit in state court.").

(4) *Lack of Subject Matter Jurisdiction*. It is well-established that lower federal courts have no jurisdiction to review the final determinations of state judicial proceedings. *See, e.g., Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986) (see cases cited). The Supreme

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[2] The court finds that privity clearly exists between the plaintiffs here and in the Circuit Court. Privity lies between " 'parties who adequately represent the same legal interests.' " *Hartke v. Chicago Bd. of Election Commissioners*, 651 F.Supp. 86, 90 (N.D. Ill. 1986) (citations omitted). Plaintiffs here are signatories to the petitions nominating candidates of the Harold Washington Party, who were the plaintiffs before Judge Wachowski. Their interests in this case are identical, as are the issues raised and the Election Code provisions involved.



Court recently revisited this principle in *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). In *Feldman*, the Court held that the district court lacked jurisdiction over much of the plaintiffs' challenge to a decision issued by the District of Columbia court. That court, which is equivalent to a state court, had denied the plaintiffs' petitions for waiver of certain requirements for admission to the D.C. bar. The Supreme Court explained:

> United States district courts . . . have subject matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state-court judgment in a particular case. They do not have jurisdiction, however, over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. Review of those decisions may be had only in this Court.

*Feldman*, at 486.

Applying this principle to the facts before it, the Court found the district court had jurisdiction to decide the constitutionality of the District of Columbia's bar rule, because that task did not require review of "a state court judgment in a particular case." *Id.* The district court had no jurisdiction to review Feldman's constitutional challenge to the rule's application in his particular case, however. *Feldman*, 460 U.S. at 486-87. The Court fashioned the following rule for courts to follow in deciding whether jurisdiction may be exercised:

> If the constitutional claims presented to a United States district court are inextricably intertwined with the state court's denial in a judicial proceeding of a particular plaintiff's

> application for admission to the state bar, then the district court is in essence being called upon to review the state court decision.

*Id.* at 482, n.16. As a host of cases following *Feldman* illustrate, the doctrine enunciated there applies to all state court judgments, not only those having to do with bar admissions. Furthermore, the *Feldman* doctrine applies to state judgments even though state court appeals are not final. *Worldwide Church of God*, at 893, n.3.

That plaintiffs here have, at least in part, sought direct review in this court of the Illinois Circuit Court's judgment can scarcely be denied. Their supporting memorandum is rife with language to that effect. See, for example, p. 9 ("the Court erred in its ruling that the nominating petitions of the HWP were defective for failure to include a slate of state officers . . . the Circuit Court's . . . decision is clearly erroneous."); p. 10 ("[b]oth the COEB and the Court were in error"); p. 13 ("[t]he imposition by the COEB and the Court that the HWP submit a total of 75,000 signatures . . . is violative of Ill. Rev. Stat. ch. 46 . . . the Equal Protection Clause, the First Amendment. . . . "); p. 14 (the Cook County Circuit Court's decision ". . . is constitutionally reprehensible . . . ").

Accepting plaintiffs' invitation to review the Circuit Court's decision would directly violate *Feldman*'s injunction against becoming "inextricably intertwined" in a final state court judgment. The court need not, however, dismiss the entire case on this ground. Like the Supreme Court in *Feldman*, this court must "differentiate between federal district court review of a state court's specific determination (which is prohibited) and a general challenge in federal court to the constitutionality of a state



rule or procedure (which is permissible)." *Kramer v. Exchange National Bank and Hon. Sophia J. Hall*, 1988 U.S. Dist. Lexis 1087 (N.D. Ill. 1988), p.6.

The case of *Worldwide Church of God, supra*, offers some useful guidance in applying the Supreme Court's "inextricably intertwined" standard. Claims are inextricably intertwined

> if the district court must "scrutinize not only the challenged rule itself, but the [state court's] application of the rule . . . " If, in order to resolve the claim, "the district court would have to go beyond mere review of the rule *as promulgated*, to an examination of the rule *as applied* by the state court to the particular factual circumstances of [the plaintiff's] case," then the court lacks jurisdiction.

*Worldwide Church of God*, at 892, *citing Razatos v. Colorado Supreme Court*, 746 F.2d 1429, 1433 (10th Cir. 1984), *cert. den.*, 471 U.S. 1016 (1985).

The foregoing principles afford plaintiffs a narrow window through which they may seek relief in this court. While not a model of clarity, their complaint and subsequent memoranda seem to challenge not only Judge Wachowski's application of Illinois' election laws, but also the constitutionality of the laws themselves. Insofar as plaintiffs dispute the Circuit Court's interpretation or application of the Illinois election code, this court lacks subject matter jurisdiction to entertain the challenge. To the extent that plaintiffs bring a constitutional challenge

to the election code itself, the court may hear it. In that light, the court addresses plaintiffs' claims below.[3]

## CONSTITUTIONAL CLAIMS

In their complaint, plaintiffs raise two constitutional claims over which this court has jurisdiction. Plaintiffs first allege that the signature requirement for new political parties seeking to be placed on the ballot in county-wide elections in 46 Ill. Rev.Stat. § 10-2 (1989) ("§ 10-2") is unconstitutional. The second constitutional argument raised by the plaintiffs is that the requirement under § 10-2 that a new political party field a complete slate is unconstitutional, if a complete slate includes a full slate of judicial candidates.

(1) *Signature Requirement*. Section 10-2 allows a group of persons wishing to establish a new political party within a county to file a petition with the county clerk to obtain a place on the ballot at the next election.

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[3] The Cook County Officers Electoral Board, Stanley T. Kusper, Jr., Aurelia Pucinski and Ernesto Borges have filed their own motion to dismiss. The gist of their motion is that the Electoral Board "has no authority to place the candidates back on the ballot." Motion, p.4. Nevertheless, movants concede that "it is not unknown for an electoral board to submit itself to the jurisdiction of the court for purpose of implementing orders relating to the preparation of ballots." Motion, n.2. Given this fact, the court declines to dismiss the Board and its members from the case. Likewise, the court declines to dismiss on the technical ground that none of the named plaintiffs are suburban voters. It would delay these proceedings unnecessarily to do so, when plaintiffs could clearly furnish an appropriate individual plaintiff.



The HWP wished to obtain its place on the ballot by acquiring the requisite number of signatures. Because the HWP hoped to run candidates for the Cook County Board, which is composed of suburban and city commissioners, it had to meet the signature requirement of § 10-2 for each "component" of the county of which its ticket was comprised.

The signature requirement of § 10-2 for running a ticket of county officers reads:

> If such new political party shall be formed for any district or political subdivision less than the entire State, such petition shall be signed by qualified voters equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district or political subdivision in which such district or political subdivision voted as a unit for the election of officers to serve its respective territorial area.

The 5% signature requirement was found to be unconstitutional to the extent that it imposed on those wishing to enter local elections a more stringent signature requirement than it imposed on those entering state-wide elections. *Illinois State Board of Elections v. Socialist Worker's Party*, 440 U.S. 173 (1979). To remedy the constitutional problem, the signature requirement of § 10-2 was amended to read:

> [W]henever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide new political party petitions at the next preceding State-wide general election, such State-wide petition

> signature requirement shall be the minimum for such district or political subdivision.

The state-wide petition signature requirement is "1% of the number of voters who voted at the next preceding State-wide general election or 25,000 qualified voters, whichever is less."

Section 10-2 goes on to require that "such petition shall consist of separate components for each district from which an officer is to be elected." The County Officers Electoral Board ("Electoral Board") considered this to include three components in the case of the HWP: the city, suburbs, and the Metropolitan Water Reclamation District ("MWRD"). Judge Wachowski of the Circuit Court of Cook County, on the other hand, determined the MWRD to be a separate political subdivision and not a component of Cook County. Therefore, Judge Wachowski found that under § 10-2, the HWP was required to gather 25,000 signatures from each of the city and the suburbs, totaling 50,000.

It is the requirement that the HWP gather 25,000 suburban signatures for the suburban component of its ballot to which the plaintiffs address their constitutional attack. Plaintiffs argue with regard to the suburban component that:

> The Board's and the Review Court's decisions that the Harold Washington Party nominating petitions for suburban members of the Cook County Board of Commissioners required 25,000 signatures were clearly invalid and unreasonable, in that there are only 25,000 signatures required from the entire county, i.e. Chicago and



> the suburbs, for the nominating of county officers of Sheriff, State's Attorney, Assessor, Treasurer, Clerk, President of the Board of County Commissioners, Superintendent of Education; and to likewise require an equal 25,000 signatures solely from the suburbs to nominate seven suburban Cook County Board members is irrational and unreasonable.

Complaint, p.16.

On a number of occasions, the Supreme Court has addressed the issue of what hurdles a state may constitutionally impose on a new political party. The Court has acknowledged that any restrictions on access to the ballot "burden two distinct and fundamental rights, 'the right of individuals to associate for the advancement of political beliefs and the right of qualified voters, regardless of their political persuasion, to cast their voters effectively.' " *Socialist Workers*, 440 U.S. at 184, citing *Williams v. Rhodes*, 393 U.S. 23 (1968). Because certain fundamental rights are at stake, a state must demonstrate that a compelling interest is served by the restrictions at issue. *Socialist Workers*, 440 U.S. at 184; *American Party of Texas v. White*, 415 U.S. 767, 780-781 (1974).

In general, the courts have upheld state laws regulating elections if "the state's justification is logically sound and consonant with common experience." *Citizens for J.W. Moore v. Chicago Election Commissioners*, 665 F.Supp. 1334, 1139 (N.D. Ill. 1987). Thus, the Supreme Court has found that a state's interest in keeping its ballots within manageable, comprehensible limits is a legitimate interest, *Bullock v. Carter*, 405 U.S. 134 (1972); as is a state's interest "in requiring some preliminary showing of a significant

modicum of support before printing the name of a political organization's candidate on the ballot – the interest, if no other, in avoiding confusion, deception and even frustration of the democratic process at the general election." *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). In *Lubin v. Panish*, 415 U.S. 709, 715 (1974), the Court observed:

> A procedure inviting or permitting every citizen to present himself to the voters on the ballot without some means of measuring the seriousness of the candidate's desire and motivation would make rational voter choices more difficult because of the size of the ballot and hence would tend to impede the electoral process.

A state may regulate to ensure an efficient electoral process, but it must do so in the least drastic way. *Id.* at 716.

Plaintiffs argue that the requirement in § 10-2 that the same number of signatures be collected for the city and the suburban component of the HWP petition is irrational and unreasonable. In support of their contention, plaintiffs rely on *Socialist Worker's*, 440 U.S. 173, a Supreme Court case that found a geographical disparity in the signature requirements under the Illinois election laws to be unconstitutional. *Socialist Worker's* was one of a series of challenges brought against the Illinois election code, on the grounds that its geographical apportionment requirements were unconstitutional.

The first such challenge, brought in *Moore v. Ogilvie*, 394 U.S. 814 (1969), led the Supreme Court to strike down an Illinois requirement that petitions nominating candidates to new political parties be signed by at least 25,000 qualified voters, including 200 qualified voters from each of at least 50 counties. The Court held that this provision



violated the due process and equal protection clauses of the Fourteenth Amendment, because 49 of the counties in Illinois contained 93.4% of the registered voters, while the remaining 6.6% of registered voters came from the remaining 53 counties. This concentration of registered voters in fewer than 50 of the counties meant a situation could arise in which 93.4% of the registered voters would be unable to form a new political party, while 6.6% of the registered voters could form a party. In this way, the strength of the majority of Illinois voters was diluted in an unconstitutional manner.

After the Illinois statue was amended to comply with *Moore*, the Supreme Curt was again faced with questions concerning the constitutionality of the signature requirements. *Socialist Worker's*, 440 U.S. 173. In *Socialist Worker's*, the Court struck down a signature requirement that conceptually parallels that faced by the HWP. Under the Illinois election law as it stood at the time the *Socialist Worker's* suit was brought, a new political party interested in entering local elections had to collect more signatures to get on the ballot than did a candidate for a state-wide election. The state could offer no reason for the disparity other than the fact that state-wide candidates had been subject to a geographic requirement as well, until the Seventh Circuit struck that down in *Communist Party of Illinois v. State Board of Elections*, 518 F.2d 517, *cert. denied*, 423 U.S. 986 (1975). The disparity was, in other words, the result of an "historical accident," which, the Supreme Court held, did not constitute sufficient reason to sustain the provision. 440 U.S. at 187.

*Socialist Worker's* does not suggest that equivalent requirements may not be imposed on differently sized

geographic areas. Thus, as a consequence of the *Socialist Worker's* decision, § 10-2 was amended to include the provision ensuring that the minimum signature requirement for a district or a political subdivision would never exceed that for State-wide office. Moreover, the Seventh Circuit has cautioned against drawing broad generalizations from the language of *Socialist Worker's:*

> The plaintiffs apparently take the position that the *Socialist Worker's Party* case stands for the broad proposition that a state may never impose a higher signature requirement for an office of a smaller subdivision than the requirement imposed for any office of a larger subdivision. We cannot agree.

*Citizens Party v. Illinois State Board of Elections*, 546 F.Supp. 1050, 1057 (1982); *Bowe v. Board of Election Commissioners of the City of Chicago*, 614 F.2d 1147, 1151 (1980).

In the last election for Cook County Board Commissioners, 1,476,370 voters cast their ballots. Of those, 841,085 were cast in the City of Chicago, and 635,285 were cast in the district outside the city. Nothing in either *Moore* or *Socialist Worker's* counsels this court to find a signature requirement of the lesser of 25,000 or 5% unconstitutional. The disparity created by the parallel requirements for the suburban and city components of the petition under § 10-2 does not create anything like the disparity at issue in *Moore*. In fact, the breakdown between the city and the suburban components was 57% and 43% respectively in 1986 and is much closer today. As the Electoral Board found in its decision of August 29, 1990, "[t]he fact that 44,000 signatures were collected in Chicago, which has only slightly more voters than suburban Cook, supports the Board's position that the 25,000



suburban requirement would be attainable if the HWP had a modicum of support in that jurisdiction." (Decision of the Electoral Board, p.13).

Furthermore, because the Board of Cook County Commissioners is composed of representatives from the city and the suburban district, the requirement that petitions be fielded from both districts is not the result of "historical accident" as in *Socialist Worker's Party*. Instead it is an efficient means of ensuring that candidates for the Cook County Board have the support of their constituents.

If the signature requirement were compounded by other unduly burdensome requirements, this court would find the signature requirement more constitutionally troubling. For example, in *Williams*, 393 U.S. at 24-25, the Supreme Court struck down a requirement that a new political party "obtain petitions signed by qualified electors totaling 15% of the number of ballots cast in the last gubernatorial election," when, in addition, that party was subject to other burdensome procedural and organizational requirements, including the requirement that a new political party run a primary election.

In *Jeness*, 403 U.S. 431, the Supreme Court upheld a 5% signature requirement, in the face of claims that established parties were advantaged by the fact that they did not face the same requirements. The Court rejected that argument, because members of established parties faced comparable burdens, such as holding primary elections. The same differentiation applies in Illinois, in which candidates from new political parties must comply with stringent signature requirements, whereas candidates

from established political parties must submit to primaries. *Jeness*, like *Williams*, illustrates the fact that signature requirements, without more, are not inherently burdensome.

In fact, the Supreme Court has held that "[d]emanding signatures equal in number to 3% or 5% of the vote in the last election is not invalid on its face." *American Party of Texas v. White*, 415 U.S. 767, 789 (1974). In light of the above, it cannot be said that a signature requirement of the lesser of 25,000 or 5% signature is unconstitutional.

(2) *Complete Slate Requirement*. We turn next to plaintiffs' second constitutional argument. Plaintiffs contend that it is unconstitutional to require a new political party to field a complete slate of judicial candidates along with a complete county slate. The argument involves the interpretation of an element of § 10-2 which requires the petition filed by a new political party to "contain a complete list of candidates of such party for all offices to be filled in the . . . political subdivision."

Judge Wachowski found that a complete slate included judicial candidates, and he, therefore, disqualified the HWP, in part, because of its failure to file any candidates for judicial office in Cook County. The Election Code does not expressly require a full slate of judicial candidates in order for a party to meet the complete slate requirement. As the Electoral Board noted, judicial offices are state, rather than county offices. (Decision of the Electoral Board, p.21). Moreover, judges are elected from separate judicial districts rather than by county, as county-wide officers are elected. It happens that in three counties, including Cook, the county subdivision and the



judicial district are coextensive. This is generally not the case, however. For this reason it seems illogical and contrary to the language and intent of the Illinois General Assembly to interpret the complete slate provision to include state judicial candidates in county-wide elections.

The only court which has interpreted the complete slate requirement of the Illinois election code is the Illinois Supreme Court in *Anderson v. Schneider*, 365 N.E.2d 900 (Ill.S.Ct. 1977). In that case, the Illinois Supreme court refused to knock the entire slate of a new political party off the ballot merely because one candidate did not meet the residency requirement. The court determined that § 10-2 does not serve as an onerous procedural requirement, but rather it aims "to obviate the possibility that a candidate might also run as an independent or as the candidate for some other party, a practice forbidden by Section 10-7 of the Code." This interpretation of the complete slate requirement as an attempt to prevent a candidate from taking two bites at the same apple underscores the idea that a full judicial slate does not fall within its terms.

In this court's view, judges are not part of the complete slate requirement set forth in § 10-2. As such, the court finds nothing unconstitutional in the requirement that the petition filed by a new political party must contain "a complete list of candidates of such party for all offices to be filled in the . . . political subdivision." By ensuring that candidates run only once, on the ticket on which they are slated, the state's interest in an efficient electoral purpose is served.

To the extent that the plaintiffs would have this court review Judge Wachowski's interpretation of § 10-2 concerning the judicial slate requirement, this court does not have jurisdiction to do so. Under the *Feldman* doctrine, as noted above, a federal district court cannot review the final decision of a state court judge.

(3) *Conclusion*. For the foregoing reasons the court holds that the signature requirement is not unconstitutional as it applies to the separate components which comprise Cook County. The court further finds that the complete slate requirement is not unconstitutional insofar as its does not require a new political party to field a complete slate of judicial candidates. Plaintiffs have failed to state a claim upon which relief can be granted. Accordingly, defendant's motion to dismiss is granted with prejudice. This shall constitute a final appealable order.

ENTER:

/s/ John A. Nordberg
JOHN A. NORDBERG
United States District Judge

DATED: October 2, 1990

FOR ARGUMENT No. 90-1126 (8)

Supreme Court, U.S.
FILED
MAY 14 1991
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

Petitioners,

vs.

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DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

Respondents.

---

PETITION FOR WRIT OF CERTIORARI
TO THE ILLINOIS SUPREME COURT

---

# PETITIONERS' REPLY BRIEF TO THE BRIEF OF RESPONDENTS DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS AND DAVID BARRERA IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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I

Subsidiary Question Presented For Review

1. The appearance of the Harold Washington Party candidates on the Cook County, Illinois November 6, 1990 general election ballot does not render moot the controversies and issues presented on this Petition for a Writ of Certiorari.

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## STATEMENT OF THE CASE

### THERE IS ONLY ONE HAROLD WASHINGTON PARTY

There is only one Harold Washington Party (HWP). The Respondents' contrary assertions, at pages 2-5, and throughout Respondents' Brief in opposition to the Petition for Certiorari, that there are two Harold Washington Parties, i.e., an "Evans" HWP and a "Pincham" HWP are, (1) deliberate misstatements, (2) without any support whatever in any record in any proceeding before any tribunal below, and are (3) diametrically opposed to the uncontradicted testimony presented to, and the findings of the Cook County Officers Electoral Board (CCOEB). [1]

The following proceedings before the CCOEB affirmatively establish and confirm that these dual HWP assertions by Respondents are clearly false, unsupported in the record and contradict the CCOEB's expressed factual findings.

Respondents, Reed, Sutton, Feichter, Ricks and Barrera, Cook County Democratic Party voters, filed six alleged objections to the HWP nominating petitions to remove the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot. The third objection alleged:

> "that the 'Harold Washington Party' is an established party' in the city of Chicago * * * The (HWP) nomination papers at issue bear the name of an already 'established political party', the 'Harold Washington Party,' and, as such, violate the (Illinois Election Code, Ch. 46) Section 10-5 prohibition against a new political party bearing 'the same name' of an established political party."

During the evidentiary hearing on the objections before the CCOEB, an attorney for the HWP candidates, Petitioners herein, answered this third objection of the Objectors as follows, (tr. pgs. 7-12, 16-17, August 21, 1990). [2]

> "Atty. Thomas: Section 10-5 (Ch. 46, Ill. Rev. Stat.), The Illinois Election Code, which basically says that the prohibition against the use of the same name is not precluded if an established party authorizes the use of that name. And this is exactly what we have here in this situation. We have an established party in the city which seeks to expand its party to run at the county level, and what that established party has done is authorized the use of the name of the established city-wide party to establish it county-wide.
>
> * * *
>
> There was no other provision within the election code that would allow the Harold Washington Party, which is a city-wide party to run a county-

[1] Again, contrary to Respondents' assertions, R. Eugene Pincham is not an official of the HWP. He was invited and requested by the HWP officials and supporters to become a HWP candidate for membership on the Cook County Board in the November 6, 1990 general election, and he accepted.



[2] (tr. pgs. 7-12, 16-17, August 21, 1990) refers to the pages of the certified transcript and the date of the proceedings on the evidentiary hearing of the objections before the CCOEB, which transcript is submitted herewith, as Appendix E.

wide slate.[3] So, therefore, this was the only means that we had in order to expand the party to the county.

In the case of the HWP, in this situation, it is an established party at the city level which is now expanding to run candidates at the county level. THESE ARE THE SAME PEOPLE IN THE HWP WHO RAN A CITY-WIDE SLATE OF CANDIDATES FOR THE MAYOR OF THE CITY OF CHICAGO. THIS IS THE SAME PARTY THAT IS NOW EXPANDING TO RUN A SLATE OF CANDIDATES ON THE COUNTY-WIDE LEVEL. SO THERE IS NOT A CHANGE IN PEOPLE. THERE IS NOT A CHANGE IN NAME. IT IS, IN FACT, THE SAME PARTY . . ." (emphasis added)

Thereupon, extensive colloquy occurred between the CCOEB members and the Objectors' sttorney, (tr. pgs. 16-45, 8/21/90), during which at no time did the Objectors' attorney contend, urge, assert, or argue the dual HWP name contention as a ground or basis for the objections to the HWP nominating petitions. Conversely, the Objectors' attorney then expressly rejected reliance on such grounds, in the following dialogue, (tr. pgs. 25-36, 8/21/90):

"Objectors' Attorney: "If we had those (HWP records) we could tell whether Mr. David Reed, who says in his affidavit that he was authorized to proceed, we'll then be able to find out if that's true.

[3] Certainly the Illinois Democratic-Republican Party legislators cannot validly restrict a competing third party from expanding from the Chicago municipality into Cook County by merely failing to provide by legislation the process or procedure for such expansion by the third party.



BUT I'LL BE CANDID WITH YOU, I DON'T WANT TO GO INTO THAT . . . (emphasis added)

CCOEB member Pucinski: Assuming that there were individuals who authorized this Harold Washington Party to expand and make nominations in the county, your argument is that that authorization still wouldn't be effective . . .

Objectors' Attorney: That's right. It wouldn't make any difference anyway. Wouldn't make any difference anyway."

Alderman Timothy Evans at the request of the CCOEB appeared before the CCOEB on August 24, 1990, at which time he was sworn and CCOEB member Pucinski interrogated him as follows: (tr. pgs. 4-5, 8/24/90:

Ms. Pucinski: "Alderman Evans, * * * YOUR TESTIMONY WILL SETTLE ONE OF THE CENTRAL ISSUES IN THIS WHOLE PROCESS, WHICH IS THE AUTHORIZATION OF THE HAROLD WASHINGTON PARTY BEFORE US TO USE THAT ON THEIR PETITIONS AS THE BASIS FOR THEIR PARTY AND THEIR CANDIDATES. SO THE CENTRAL QUESTION IS, DO YOU AUTHORIZE THE USE OF THE NAME HAROLD WASHINGTON PARTY FOR THIS PURPOSE?

Mr. Evans: YES, I DO AUTHORIZE THE USE OF THE NAME HAROLD WASHINGTON PARTY FOR EXPANSION INTO THE COUNTY.

CCOEB member
Mr. Kusper: So that to try to sum this up, THE CITY OF CHICAGO HAROLD WASHINGTON PARTY DOES GIVE ITS PERMISSION AND AUTHORIZES THE USE OF THE HAROLD WASHINGTON PARTY NAME TO EXPAND IN SUBURBAN COOK?

Mr. Evans: "YES, THAT IS CORRECT." (emphasis added)

Predicated on these foregoing unrebutted representations and testimony, the CCOEB made the following factual findings and decision: Appendix D

> "HE (TIMOTHY EVANS) AUTHORIZED THE HWP CANDIDATES TO USE THE PARTY NAME. The Board was concerned that confusion would exist if the Chicago HWP was indeed, not the same as the new political party in the County, namely the HWP. A QUESTION THAT NEEDED TO BE RESOLVED WAS WHETHER THE NEW HWP WAS ONE AND THE SAME AS THE CHICAGO HWP INVOLVING THE SAME PEOPLE. * * * Evans testified that the County HWP was granted permission by him (as the only candidate of the Chicago HWP) to use the party name as an official branch of the Chicago HWP. Although Evans is not the statutory party chairman he is the only empowered person by the Election Code to act in any official capacity for the HWP.[4]
>
> We find that Evans' testimony was credible and uncontroverted and he is the only person at this point in time, allowed to act as specified above for the Party. Evans testified that he gave permission for use of the name prior to the County HWP petitions being circulated and he is the only person to testify in these regards.
>
> (HERE), THE EVIDENCE DEMONSTRATES THAT IT IS THE SAME HWP WHICH IS REACHING OUT TO EXPAND INTO NEW POLITICAL TERRITORY . . . Thus, the motion (of petitioners) to dismiss the objection that the name Harold Washington Party, could not be used by the candidate is granted." (emphasis added).

[4] The unconstitutionality of the provision of the Illinois Election Code, Ch. 46, Sec. 10-2, Ill. Rev. Stat., which attempts to prescribe and define the authority of a political party leader to manage and operate the party need not here be decided or discussed.



From the foregoing, the conclusion is inescapable that the Respondents' assertions before this Court of a dual HWP, i.e., an Evans HWP and a Pincham HWP, are deliberate misstatements. Whether deliberate misstatements, or whether for purposes of civility Respondents' misstatements are labeled unintentional mistakes, these assertions by Respondents are clearly incorrect, unsupported, but indeed contradicted by the uncontroverted evidence and the CCOEB's findings.

## ARGUMENT

### THE CONTROVERSIES AND ISSUES PRESENTED IN THE INSTANT PETITION ARE NOT MOOT

Contrary to the Respondents' assertion that "there is no longer any need for the Court to adjudicate Petitioners' ballot access," the controversies and issues presented in the instant petition are not moot. There yet remains a dire and desperate need for this Honorable Court to resolve these issues in a published decision for future authority, directions and guidance, for the following reasons:

First; in a 26 page unpublished decision the CCOEB removed some, and placed other HWP candidates on the November 6, 1990 general election ballot. On appeal, in an order entered October 12, 1990, the four Illinois Supreme Court Democratic Party Justices reversed the CCOEB decision and removed the HWP and all its candidates from said ballot. The three minority Illinois Supreme Court Republican Party Justices dissented in two opinions. The Illinois Supreme Court's majority reversal order, (1) preliminarily states that the order "is entered by a vote of a majority of the Court, WITH AN OPINION TO BE FILED AT A LATER DATE," and (2), in conclusion, the order further states, "AN OPINION WILL LATER BE FILED SETTING FORTH THE REASONS SUPPORTING THIS ORDER." Each of the three Illinois Supreme Court dissenting Justices joined in two dissenting opinions, one of which states: "These two sections of the Code, together,



support the conclusion that the petition before this Court does not violate Section 10-5, a position which I WILL EXPLAIN IN DETAIL IN A DISSENT I WILL WRITE TO THE OPINION THE MAJORITY WILL FILE AT A LATER DATE." (emphasis added).

Up to this very moment of May 14, 1991, the Illinois Supreme Court majority has failed to render an opinion in this case. Several explanations are offered for this unprecedented failure. One explanation is that the Illinois Supreme Court majority has postponed rendition of an opinion pending this Honorable Court's ruling on Respondents' objection to the instant Petition for Certiorari on the ground of mootness. Should this Honorable Court deny the instant Petition for Certiorari on the ground of mootness, or on any other ground, the Illinois Supreme Court majority will then and thereafter be at liberty to render an opinion reversing the CCOEB's decision in whatever language the majority chooses to use, without review thereof by this Honorable Court. The Illinois Supreme Court majority Justices reversed the CCOEB's decision and removed the HWP and its candidates from the ballot. This Honorable Court's Orders of October 23 and 25, 1990, however, did not reverse the Illinois Supreme Court majority Order; rather, this Court merely stayed the Illinois Supreme Court majority rever-

sal Order and reinstated the CCOEB's decision "pending the timely filing and disposition of a petition for a Writ of Certiorari." Under these circumstances, an Illinois Supreme Court majority subsequent opinion, or its October 12, 1990 reversal order removing the HWP and its candidates from the November 6 ballot will be the final published order and authority on the issues and controversies presented in the instant Petition for Certiorari, both of which will be contrary to this Honorable Court's October 23 and 25, 1990 Orders, as well as this Honorable Court's decisions in Illinois State Board of Election v. Socialist Party, 440 U.S. 173 (1979); Lubin v. Panish, 415 U.S. 709 (1974); Moore v. Ogilvie, 394 U.S. 814 (1969), an unprecedented imbroglio.

Another reason proffered for the Illinois Supreme Court majority's unusual neglect in rendering its majority opinion is that no majority opinion can now be written, because two of the Illinois Supreme Court majority Justices, Justices David Ward and John Stamos, who joined in the Court's October 12, 1990 reversal order, are no longer members of Illinois Supreme Court. They retired from the Court on December 6, 1990, without having joined in or ratified a majority opinion. They have been replaced by Justices Michael A. Bilandic and Charles A. Freeman, neither of whom were members of the Court on October 12, 1990 when the Court's majority reversal Order was entered.



Under these circumstances, should this Honorable Court deny the instant Petition for Certiorari for mootness, or on any other ground, the Illinois Supreme Court majority reversal Order of October 12, 1990 will be the final published judicial authority on the instant issues and controversies for future guidance and direction, again, a most undesired and unprecedented dilemma.

Second; the CCOEB held that Ch. 46, Sec. 10-2, the Illinois Election Code required,(1), 25,000 Cook County suburban (excluding Chicago) voters' signatures on the HWP nominating petitions for election to the multiple offices of suburban (excluding Chicago) Cook County Board of Commissioners, (2), another 25,000 Chicago voters' signatures on the HWP nominating petitions for election to the multiple offices of Chicago membership on the Cook County Board of Commissioners, and, (3), but only 25,000 voters' signatures from the entire county, suburban Cook County and/or Chicago, on the HWP nominating petitions for election to the singular Cook County wide offices of State's Attorney, Clerk, Treasurer, Assessor, County Board President and Sheriff. The CCOEB further held that these varying 25,000 signature requirements did not violate the 14th Amendment constitutional equal protection guarantee, or this Court's decision in Illinois State

Board of Election v. Socialist Workers Party, 440 U.S. 173, (1979). The four majority Illinois Supreme Court Justices agreed with these CCOEB holdings. The three dissenting Illinois Supreme Court Justices disagreed, stating:

> "As to the provisions of the Election Code concerning the required number of signatures on a new party's petition, here again the majority of this Court adopted a narrow and strict construction of the language of Section 10-2. In fact, the provisions of Section 10-2 are contradictory in this regard and the majority chose to adopt the language that would rule the HWP candidates from suburban Cook County off the ballot instead of the language of that section which would have permitted them to remain on the ballot.
>
> * * *
>
> A logical construction would be that the entire petition for the formation of a new party in Cook County must have 25,000 signatures.
>
> * * *
>
> In light of the holding in Socialist Workers Party, it is incumbent upon this Court to avoid a narrow and strict construction of the Election Code, which denied the HWP candidates access to the ballot."

Further disagreeing with the 25,000 suburban and the 25,000 Chicago voters' signature requirements proclaimed by the Illinois Supreme Court majority, the Illinois Supreme Court dissenting minority stated:

> "The majority's result in the present case seemingly conflicts with the Supreme Court's decision in Illinois State Board of Election v. Socialist Workers Party (1979) 440 U.S. 173, which invalidated, on constitutional ground, an earlier provision in Section 10-2 (Ch. 46, the Ill. Election Code) that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide."



The Illinois Supreme Court dissenting Justices in the case at bar, in addition, aptly pointed out:

> "After today's decision (by the four majority Justices), it is not clear how a new party may go about expanding from one district to another."

A difinitive published decision by this Honorable Court resolving these controversies and issues is sorely needed for future guidance and direction.

Third; the CCOEB held that the absence of the 25,000 suburban voters' signatures on the HWP nominating petitions for suburban Cook County Board members did not require removal of the HWP and all its other candidates from the November 6, 1990 ballot. The four majority Illinois Supreme Court Justices disagreed and held that because the HWP petitions failed to contain 25,000 suburban voters' signatures for the suburban Cook County Board members, all the other HWP candidates for all the other County offices and the HWP must be removed from the ballot. The three minority dissenting Illinois Supreme Court Justices however agreed with this CCOEB ruling, stating:

> "This Court should construe the Election Code liberally in favor of permitting the HWP access to the ballot. * * *
>
> In sum, since we are dealing here with fundamental rights, I believe it is incumbent upon this Court to adopt the construction of the Election Code which will afford the HWP

candidates access to the ballot.

* * *

> (T)here are several narrow alternatives to the majority's interpretation of the provisions of Section 10-2 pertaining to signature requirements. None of those alternatives would compel the harsh result of invalidating the entire ticket for the failure to present a total of 50,000 signatures for the combined components of the Cook County slate."

A definitive published opinion from this Honorable Court on whether the rights guaranteed under the 1st, 14th and 15th Constitutional Amendments permitted removing the invalid suburban Cook County Board candidates from the ballot, as the CCOEB and the Illinois dissenting Justices held, but conversely, prohibited removing all the other valid HWP candidates for the other Cook County offices from the ballot.

Fourth; under the provisions of the Illinois Election Code, Ch. 46, Secs. 10-8 and 10-10.1, Ill. Rev. Statute, the nominee-candidates are the only parties who may appear before the CCOEB on the hearing of the objections to the nominating petitions to remove the nominee-candidates from the ballot, or before any appellate tribunal on the appeal of any CCOEB ruling. Because these election code provisions precluded the appearances or the participation of the HWP and/or the HWP voting supporters in the proceedings before the CCOEB, or on the appeal of



the CCOEB decision before the reviewing Circuit Court of Cook County or the Illinois Supreme Court, to protect their constitutional rights and interest, six (6) HWP voting supporters filed an action under 42 USC Sec. 1983 in the United States District Court for the Northern District of Illinois, the Honorable John Nordberg presiding, to enjoin the removal of the HWP and its nominee-candidates from the November 6, 1990 ballot, entitled Timuel Black, et al. v. Cook County Officers Electoral Board, et al. 90 C 5529. On October 2, 1990, the District Court, in an opinion to be published, dismissed the complaint on the ground that it lacked jurisdiction. However, after ruling that it lacked jurisdiction and that the complaint should be (and was) therefore dismissed, the District Court ironically proceeded further and gratuitously decided "that the (25,000 Cook County suburban voters') signature requirement (on nominating petitions for suburban Cook County Board members) is not unconstitutional as it applies to the separate components which comprise Cook County."

This District Court decision is clearly erroneous, repugnant to and violative of this Court's decisions in Illinois State Board of Election v. Socialist Workers' Party, 440 U.S. 173 (1979); Lubin v. Panish, 415 U.S. 709 (1974); Moore v. Ogilvie, 394 U.S. 814 (1969). The

District Court's laborious convolusions to distinguish these decisions were futile.

This District Court decision was also rendered 10 days before the Illinois Supreme Court's October 12, 1990 majority and dissenting opinions, sought to be reviewed herein, and 23 days prior to this Court's October 25, 1990 order restoring the HWP and its candidates to the November 6, 1990 ballot. Additionally, this District Court's unprecedented decision is diametrically opposed to the dissents of the three dissenting Illinois Supreme Court Justices. This erroneous District Court decision will be a published authoritative final decision on this issue should this Court dismiss the instant Petition for Certiorari as moot, as Respondents' request. Plaintiffs appealed the District Court's decision and dismissal of their complaint to the United States Court of Appeals for the Seventh Circuit, Docket No. 90-3203, Black, et al., Appellants v. CCOEB, Appellees and Reed, et al, Intervening Appellees. The Court of Appeals on Janury 18, 1991 ordered that the appeal be held in abeyance pending this Honorable Court's disposition of the instant Petition for a Writ of Certiorari, for which additional reason, we further urge that the Petition be granted.

Fifth; the Chicago-Cook County Democratic Party



power structure continues to deny the HWP equal treatment under the election laws, which caused the HWP to file an action in the United States District Court for the Northern District of Illinois to compel the Chicago Election Board to appoint HWP election judges, as it had appointed Republican and Democratic Party election judges for the polling places in the April 2, 1991 Chicago mayoral election. This action was entitled, the HWP, et al. vs. the Chicago Board of Election Commissioners, et al., No. 91 C 1727, the Honorable John Nordberg presiding. Even though it was unchallenged that the HWP was the second largest Chicago political party and that city election judges had been appointed for the much smaller Republican Party, the District Court denied relief. An appeal from this denial is now pending in the United States Court of Appeals for the Seventh Circuit, Docket No. 91-1686. The allowance of the Petition for Certiorari in the instant cause and a published decision resolving the issues and controversies herein by this Honorable Court will most assuredly impact on this appeal.

The issues and controversies in the petition at bar indeed are not moot and the bench, bar, political parties and the public desperately desire and need a definitive published opinion from this Court resolving these issues,

as judicialauthority for future guidance and direction.

Respectfully submitted,

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No. 90-1126

MOTION FILED
FEB 7 1991

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1990

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, DINA F. MCNEAL, JAMES A. DEANS, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, ROBERT E. BROOKS, CHESTER LESURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

*Petitioners,*

v.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, DAVID BARRERRA, STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting the COOK COUNTY OFFICERS BOARD, STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS, ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

*Respondents.*

**On Petition for Writ of Certiorari to the Supreme Court of Illinois**

## MOTION FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE* AND BRIEF OF INDEPENDENT VOTERS OF ILLINOIS-INDEPENDENT PRECINCT ORGANIZATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1990

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No. 90-1126

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BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, DINA F. MCNEAL, JAMES A. DEANS, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, ROBERT E. BROOKS, CHESTER LESURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

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*Respondents.*

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**On Petition for Writ of Certiorari to the Supreme Court of Illinois**

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## MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

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The Independent Voters of Illinois-Independent Precinct Organization (IVI-IPO) respectfully moves for leave to file the attached brief as *Amicus Curiae* in support of the Petitioners. Consent to file this brief has been obtained from the Petitioners and the Cook County Electoral Board. The Chicago Board of Election Commissioners has stated that it has no objection to the filing of this amicus brief. The remaining Respondents oppose this motion on the ground that IVI-IPO is supporting the position of the Petitioners.

The decision of the Illinois Supreme Court in this case interpreting the Illinois election laws directly limits the access of new political parties to the ballot in a way that restricts First Amendment rights and is discriminatory in violation of the Fourteenth and Fifteenth Amendments and the Voting Rights Act. Requiring Petitioners and other new political parties that desire to run candidates in Cook County to obtain 25,000 signatures in the City of Chicago and another 25,000 signatures in the areas of Cook County outside the City of Chicago when only 25,000 signatures are required to form a new statewide party unduly abridges their right to associate and advance their political beliefs and the right of qualified voters, regardless of political persuasion, to cast their ballots effectively.

The Illinois Supreme Court's interpretation of the Illinois election laws allows the voters from one political component to defeat the choice of the voters in another, separate component. In elections where racial segregation or racial polarization exists, the system sanctioned by the Illinois Supreme Court can easily result in the voters in a district where one race predominates defeating the preferred choice of voters in another district where another race predominates.

Finally, the system sanctioned by the Supreme Court of Illinois is not the least drastic means for the State to accomplish its legitimate ends.

The IVI-IPO is a non-partisan organization of Illinois voters which is active in endorsing and supporting candidates of all parties for office both in party primary and general elections.*

Established in 1944, IVI-IPO is a voluntary political association whose existence and effectiveness depends on freedom of association and open participation in the processes of government. IVI-IPO has a very substantial membership in Cook County, Illinois. It therefore has an interest in the electoral system and in ballot access questions which affects it and its members. IVI-IPO has an interest in this case from the point of view of an independent political organization of longstanding that has fought for political electoral reform at the polls and through the courts including participation in *Rutan v. Republican Party of Illinois*, 110 S.Ct. 48 (1989) and *Elrod v. Burns*, 425 U.S. 909 (1976). IVI-IPO does not see this dispute as one solely between the Harold Washington Party and the Democratic Party. It sees this case as affecting all new and independent political organizations that are seeking or will seek ballot access in Illinois in the future, particularly in subdivisions of the state, such as counties.

For this reason, the Independent Voters of Illinois-Independence Precinct Organization believes that this Court's review is needed, and submits the attached brief in support of the Petitioners.

Respectfully submitted,

MICHAEL P. SENG
WALTER J. KENDALL III
*Attorneys for Amicus Curiae*

---

* IVI-IPO endorsed ten Democrats running county-wide or for membership on the Cook County Board from Chicago or the Cook County suburbs for the November 6, 1990 general election. IVI-IPO also endorsed seven Republican candidates and two Harold Washington Party candidates for these offices in Cook County in the November 6, 1990 election.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1990

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No. 90-1126

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BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, DINA F. MCNEAL, JAMES A. DEANS, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, ROBERT E. BROOKS, CHESTER LESURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH,

*Petitioners,*

v.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, DAVID BARRERRA, STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES constituting the COOK COUNTY OFFICERS BOARD, STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY, ILLINOIS, ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

*Respondents.*

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**On Petition for Writ of Certiorari to the Supreme Court of Illinois**

---

**BRIEF OF INDEPENDENT VOTERS OF ILLINOIS-INDEPENDENT PRECINCT ORGANIZATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS**

---

By leave of Court, the Independent Voters of Illinois-Independent Precinct Organization files this brief as *Amicus Curiae* in support of the Petitioners.

## INTEREST OF *AMICUS CURIAE*

The Independent Voters of Illinois-Independent Precinct Organization (IVI-IPO) is an organization of voters which is active in endorsing and supporting candidates for public office both in party primary and general elections.[1] IVI-IPO has an interest in maintaining a free, fair electoral system.

When issues involving restrictions on the access to a ballot are before this Court, IVI-IPO seeks to provide assistance by the filing of *amicus curiae* briefs. See, e.g., *Rutan v. Republican Party of Illinois*, 110 S.Ct. 48 (1989).

The decision of the Illinois Supreme Court in this case acts as a serious restriction on independent political organizations that seek access to the ballot and limits the rights of qualified voters to cast ballots for the candidates of their choice. The decision may also seriously affect the ability of minority political organizations to participate in the political process. Voters in one geographic area can prevent candidates in another geographic area from having access to the ballot. This can seriously restrict the free flow of political opinion in violation of the First Amendment. In racially segregated areas where voting is done along racial lines, it can enable voters in a geographic area where voters of one race predominate to defeat the choice of voters in another geographic area where voters of another race predominate.

[1] IVI-IPO endorsed ten Democrats running county-wide or for membership on the Cook County Board from Chicago or the Cook County suburbs for the November 6, 1990 general election. IVI-IPO also endorsed seven Republican candidates and two Harold Washington Party candidates for these offices in Cook County in the November 6, 1990 election.



IVI-IPO believes that the potential impact of the Illinois Supreme Court's decision extends beyond this one election dispute.[2] It will seriously affect the ability of new, independent parties to grow and to run candidates for office in both district and at-large elections. The decision affects not only Chicago/Cook County but all 102 counties in the State of Illinois. It not only affects the Harold Washington Party but all existing and future independent political organizations.

IVI-IPO agrees with Petitioners that the requirements of the Illinois Election Code as interpreted by the Illinois Supreme Court are overbroad and are not necessary to achieve legitimate state interests. They unduly restrict ballot access so as to jeopardize free and open political expression.

## SUMMARY OF ARGUMENT

The decision of the Illinois Supreme Court required the Harold Washington Party to obtain 25,000 signatures in the city and 25,000 in the county unduly restricts access to the ballot in Illinois. It is in direct conflict with *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979) and it permits voters in one geographic area to exclude from the ballot the candidates favored by voters in another geographic area in violation of *Moore v. Ogilvie*, 394 U.S. 814 (1969).

[2] The November 6, 1990 election is over, but the Illinois Supreme Court's interpretation of the Illinois statutes will remain and will control future elections in Illinois. The problem is therefore "capable of repetition, yet evading review." *Moore v. Ogilvie*, 394 U.S. 814, 816 (1969); *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 187 (1979).

## ARGUMENT

### I. THE DECISION OF THE ILLINOIS SUPREME COURT UNDULY RESTRICTS ACCESS TO THE BALLOT IN ILLINOIS

The Illinois Supreme Court's decision in this case sanctions a practice of excluding independent parties from ballot access in Illinois that goes back a number of years *See Moore v. Ogilvie*, 394 U.S. 814 (1969) (invalidatir a requirement that a new political party obtain 25,0[illegible] qualified voters, including 200 qualified voters from at least 50 counties); *Communist Party v. State Board of Elections*, 518 F.2d 517 (7th Cir. 1975), *cert. denied*, 423 U.S. 986 (1975) (invalidating a requirement that new parties obtain 25,000 signatures of qualified voters, not more than 13,000 of which could be counted from any one county); *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979) (invalidating a requirement that new parties running in a subdivision of the state must obtain more than 25,000 signatures, 25,000 signatures being the number required to obtain access to a statewide ballot).

This Court has recognized that restrictions on access to the ballot burden two distinct fundamental rights: "the right of individuals to associate for the advancement of political beliefs and the right of qualified voters, regardless of their political persuasion to cast their votes effectively." *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979), quoting *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). When such fundamental rights are at stake "a State must establish that its classification is necessary to serve as compelling interest." *Illinois State Board of Elections v. Socialist Workers Party, supra.* Furthermore, "even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty". The States must adopt "the least drastic means to achieve their ends." *Illinois State Board of Elections v.*



*Socalist Workers Party, supra,* 440 U.S. at 185. *See also, Williams v. Rhodes,* 393 U.S. 23, 31-33 (1968).

The State of Illinois cannot show that the means chosen here are necessary to achieve its ends.

### II. THE DECISION OF THE ILLINOIS SUPREME COURT IS IN DIRECT CONFLICT WITH *ILLINOIS STATE BOARD OF ELECTIONS v. SOCIALIST WORKERS PARTY*

*Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 186 (1979), requires a State to have a "compelling" reason to require more petition signatures for getting on the ballot in a smaller voting unit than in the state as a whole. In that case, this Court condemned a requirement whereby 63,373 signatures were required to create a new political party in Chicago whereas only 25,000 signatures were required to create a new state-wide party in Illinois. Here the Illinois Supreme Court has interpreted the statute to require that the Harold Washington Party candidates need 50,000 signatures to get on the Cook County ballot while it would need only 25,000 signatures to run state-wide. This is blatantly inconsistent with the holding of *Socialist Workers Party.* The disparate treatment cannot be justified even under the rational-basis test. *See* concurring opinion of Chief Justice Rehnquist, 440 U.S. at 191.

Furthermore, the means chosen by the State to regulate the ballot are not the "least drastic means" to assure that candidates enjoy "a significant modicum of support before a new political party may appear on the ballot." *Bowe v. Board of Election Commissioners*, 614 F.2d 1147, 1151 (7th Cir. 1980). In the present case, the Harold Washington Party demonstrated significant support in both the city and the county at-large. The only area it was deficient was in non-Chicago Cook County.[3] Even if

[3] "Deficient" is a relative term here. The Harold Washington Party had approximately 7,000 suburban-only signatures. Candi-

there existed a good reason to exclude the Harold Washington Party from the suburban-only races, there is clearly no good reason to exclude them from the city-only and the at-large county races.

## III. THE DECISION OF THE ILLINOIS SUPREME COURT PERMITS VOTERS IN ONE GEOGRAPHIC AREA TO EXCLUDE FROM THE BALLOT THE CANDIDATES FAVORED BY VOTERS IN ANOTHER GEOGRAPHIC AREA

The effect of the decision of the Illinois Supreme Court is to give suburban voters in Cook County a veto over who can run for office in the City of Chicago or at-large in Cook County. The decision thus presents the same discrimination that this Court condemned in *Moore v. Ogilvie*, 394 U.S. 814 (1969). In *Moore*, this Court held that the Illinois Election Code's requirement that a new political party obtain the signatures of 25,000 qualified voters, including 200 qualified voters from at least 50 counties, violated due process and equal protection. That requirement permitted the voters of less populous counties to exercise a veto over the choice of residents in more populous counties and violated the one person, one vote basis of a representative government. *See Reynolds v. Sims*, 377 U.S. 533 (1964).

The current requirement is even more restrictive. It not only allows a minority to thwart the desire of a majority, it allows the voters in one geographical component to prevent the voters in a separate geographical component from voting for the candidates of their choice solely within that component. Suburban voters can thus prevent candidates from running for city-only offices. This is not only irrational; it violates the very premise of a representative government.

---

dates seeking nomination as suburban county board members in the Republican and Democratic primaries for this election needed under 2,500 signatures. Illinois Solidarity Party candidates needed fewer than 200 signatures.



The requirement is also offensive because it can allow voters in districts where one race is predominate to defeat the preferred candidate of voters in another district where another race is predominate. Election schemes that operate to fence out a racial minority violate the Fourteenth and Fifteenth Amendments, *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *White v. Regester*, 412 U.S. 755 (1973), as well as the Voting Rights Act, *Thornburg v. Gingles*, 478 U.S. 30 (1986).

## IV. THE DECISION OF THE ILLINOIS SUPREME COURT RESTRICTING THE USE OF A PARTY'S NAME VIOLATES DUE PROCESS AND EQUAL PROTECTION

The Illinois Supreme Court also held that the Harold Washington Party cannot be on the ballot because use of that party's name violates a separate statutory provision which prevents a party from using the name of another established political party. The Illinois Supreme Court ruled that a political party established in one electoral unit cannot expand or grow into another political unit under the same name unless it runs state-wide. Even "permission" from the local established party to the "expanding" new party is not sufficient to permit it to use its name. (See Justice Miller's dissenting opinion, slip opinion at p. 3.) This "additional substantial burden," *Williams v. Rhodes*, 393 U.S. 23, 24 (1968), is likewise unconstitutional. It is clearly not the "least drastic means" necessary to protect the legitimate interests of the State in protecting the names of established political parties and in not confusing the voters.

## CONCLUSION

As an independent, non-partisan political organization, IVI-IPO believes that as a matter of public policy, it is essential that state election laws be construed and applied whenever possible to allow access to the ballot, not to prohibit it. In this case the Illinois Supreme Court has violated this fundamental dictum. For the foregoing reasons, the decision of the Illinois Supreme Court striking the Harold Washington Party from the ballot should be set aside, and the statute as interpreted declared unconstitutional.

Respectfully submitted,

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**Nos. 90-1126, 90-1435 Consolidated**

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**In The**

# Supreme Court of the United States

**October Term, 1991**

BARBARA J. NORMAN, et al.,

*Petitioners,*

v.

DOROTHY REED, et al.,

*Respondents.*

COOK COUNTY OFFICERS ELECTORAL BOARD, et al.,

*Petitioners,*

v.

DOROTHY REED, et al.,

*Respondents.*

**On Writ Of Certiorari To The Supreme Court Of Illinois**

## JOINT APPENDIX

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**Petition For Certiorari In No. 90-1126 Filed October 19, 1990; Petition For Certiorari In No. 90-1435 Filed March 11, 1991; Certiorari Granted May 20, 1991**

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COUNTY DEPARTMENT, COUNTY DIVISION

DOROTHY REED, et al., Petitioners, v. STANLEY T. KUSPER, JR., et al., Respondents.
Case No. 90 CO 238 and

BARBARA J. NORMAN, et al., Petitioners, v. STANLEY T. KUSPER, JR., et al.,
Respondents., Case No. 90 CO 244, Consolidated.

RELEVANT DOCKET ENTRIES

| Date | Filed By | Description |
|---|---|---|
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| 9/25/90 | Reed | NOTICE OF CROSS-APPEAL. |

| | | |
|---|---|---|
| 9/27/90 | County Officers Electoral Board | NOTICE OF JOINING APPEAL. |

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IN THE APPELLATE COURT OF ILLINOIS,
FIRST JUDICIAL DISTRICT

Case No. 1-90-2708
DOROTHY REED, et al., Appellees, vs. STANLEY T. KUSPER, JR., et al., Appellants.

RELEVANT DOCKET ENTRIES

| Date | Filed By | Description |
|---|---|---|
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SUPREME COURT OF ILLINOIS

Case No. 70833.
DOROTHY REED, et al., Appellees, vs. STANLEY T. KUSPER, JR., et al., Appellants.

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| | | |
|---|---|---|
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.....BIND HERE.....

2372

## PETITION FOR NOMINATION AND TO FORM A NEW POLITICAL PARTY

We, the undersigned, duly qualified and registered voters of the City of Chicago, County of Cook, State of Illinois, do declare that it is our petition to form a new political party in the County of Cook to be known and designated as the

# HAROLD WASHINGTON PARTY

and we do also petition that the following named persons shall be candidates of the **HAROLD WASHINGTON PARTY** for the offices hereinafter specified in and for the County of Cook, State of Illinois, to be voted for at the General Election to be held on the Sixth day of November, A.D., 1990.

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| TOMMY BREWER | SHERIFF OF COOK COUNTY | 646 Sheridan Square Evanston, Illinois 60202 |
| CHARLES W. ALEXANDER | TREASURER OF COOK COUNTY | 12345 South State Street Chicago, Illinois 60628 |
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| WILL LAWRENCE | COMMISSIONER OF THE BOARD OF APPEALS OF COOK COUNTY | 2921 South Michigan Avenue, Apt. 411 Chicago, Illinois 60616 |
| KENNETH G. HOPKINS | COMMISSIONER OF THE BOARD OF APPEALS OF COOK COUNTY | 8500 South Muskegon Avenue Chicago, Illinois 60617 |
| R. EUGENE PINCHAM | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO) | 9316 South Michigan Avenue Chicago, Illinois 60619 |
| ROBERT E. PINCHAM, JR. | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO) | 9316 South Michigan Avenue Chicago, Illinois 60619 |
| BARBARA J. NORMAN | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO) | 9228 South Colfax Avenue Chicago, Illinois 60617 |
| PERCY V. COLEMAN | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO) | 12042 South Morgan Street Chicago, Illinois 60643 |
| VIVIAN D. STEWART-TYLER | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO) | 4319 W. West End Avenue, Apt. 1 Chicago, Illinois 60624 |
| JAMES A. DEANES | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO) | 5418 West Gladys Avenue Chicago, Illinois 60644 |
| DINO F. McNEAL | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO) | 8000 South Michigan Avenue Chicago, Illinois 60637 |
| MARY KING CRISS | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO) | 2052 West Jackson Blvd., 2nd Floor Chicago, Illinois 60612 |
| DAVID T. PERSONS | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO) | 6730 S. South Shore Drive, Apt. 601 Chicago, Illinois 60649 |
| HELEN E. JONES | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM THE CITY OF CHICAGO) | 6812 South Champlain Avenue, Apt. 1104N Chicago, Illinois 60637 |

| | SIGNATURE | STREET AND NUMBER | CITY, TOWN, OR VILLAGE | COUNTY |
|---|---|---|---|---|
| 1 | Sandra Shannon | 8418 S. Kostner | CHICAGO | COOK COUNTY ILLINOIS |
| 2 | Donald E. Jackson | 9443 So. Loflin | CHICAGO | COOK COUNTY ILLINOIS |
| 3 | Clarence Bagley | 8907 So. Parnell | CHICAGO | COOK COUNTY ILLINOIS |
| 4 | [illegible] | 7816 S. Throop | CHICAGO | COOK COUNTY ILLINOIS |
| 5 | [illegible] | 7859 So. Eggleston Ave | CHICAGO | COOK COUNTY ILLINOIS |
| 6 | Ruby L. Stones | 9047 S. [illegible] | CHICAGO | COOK COUNTY ILLINOIS |
| 7 | Willie Mower | 7734 S. Vincennes | CHICAGO | COOK COUNTY ILLINOIS |
| 8 | Linda Wilson | 7846 S. CREGIER | CHICAGO | COOK COUNTY ILLINOIS |
| 9 | Levi Bridges | 12223 S. Wentworth | CHICAGO | COOK COUNTY ILLINOIS |
| 10 | Charlotta McClain | 12824 So Eliz St. | CHICAGO | COOK COUNTY ILLINOIS |

## AFFIDAVIT OF CIRCULATOR

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

I, Roemell Wooten (print name of circulator), do hereby certify that I am a registered voter of the City of Chicago and that I reside and am registered to vote at 1207 W. 79th St. (house number, name of street), in the City of Chicago, County of Cook, and the State of Illinois, and that the signatures on this sheet were signed in my presence and are genuine, and that none of the signatures on this sheet were signed more than 90 days preceding the last day for filing of this petition, and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters of the City of Chicago, State of Illinois, and that their respective residences are correctly stated as above set forth.

Roemell Wooten
(signature of circulator)

Subscribed and sworn to before me, this 31 day of July, A.D., 1990 by Roemell Wooten (print name of circulator)

Veronica R. Hammond
(signature of Notary Public)

OFFICIAL SEAL
VERONICA R HAMMOND
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. JULY 20, 1994

SEAL

My Commission Expires on _____

SHEET NO. 5

Form of Harold Washington Party County/City Petitions (Remaining sheets omitted in printing)

Form of Harold Washington Party County/Suburban Petitions (Remaining sheets omitted in printing)

5

x .....BIND HERE..... x

## PETITION FOR NOMINATION AND TO FORM A NEW POLITICAL PARTY

We, the undersigned, duly qualified and registered voters of the County of Cook outside of the City of Chicago, State of Illinois, do declare that it is our intention to form a new political party in the County of Cook to be known and designated as the

# HAROLD WASHINGTON PARTY

and we do also petition that the following named persons shall be candidates of the **HAROLD WASHINGTON PARTY** for the offices hereinafter specified in and for the County of Cook, State of Illinois, to be voted for at the General Election to be held on the Sixth day of November, A.D., 1990.

| NAME | OFFICE | ADDRESS |
|---|---|---|
| BARBARA J. NORMAN | PRESIDENT OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY | 9228 South Colfax Avenue Chicago, Illinois 60617 |
| JANICE H. ROBINSON | STATES ATTORNEY OF COOK COUNTY | 2113 West 119th Street Blue Island, Illinois 60406 |
| DONALD PAMON | ASSESSOR OF COOK COUNTY | 7910 South Bennett Avenue Chicago, Illinois 60649 |
| HELDIA R. RICHARDSON | CLERK OF COOK COUNTY | 10023 South Calumet Avenue Chicago, Illinois 60628 |
| TOMMY BREWER | SHERIFF OF COOK COUNTY | 646 Sheridan Square Evanston, Illinois 60202 |
| CHARLES W. ALEXANDER | TREASURER OF COOK COUNTY | 12345 South State Street Chicago, Illinois 60628 |
| DOROTHY C. HOGAN | SUPERINTENDENT OF EDUCATIONAL SERVICE REGION OF COOK COUNTY | 300 North State Street, Apt. 5820 Chicago, Illinois 60610 |
| WILL LAWRENCE | COMMISSIONER OF THE BOARD OF APPEALS OF COOK COUNTY | 2921 South Michigan Avenue, Apt. 411 Chicago, Illinois 60616 |
| KENNETH G. HOPKINS | COMMISSIONER OF THE BOARD OF APPEALS OF COOK COUNTY | 8556 South Muskegon Avenue Chicago, Illinois 60617 |
| ROBERT E. BROOKS, JR. | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO) | 3474 Western Avenue, Apt. B Park Forest, Illinois 60466 |
| MELLO SAM H. CLORA | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO) | 1504 South 1st Avenue Maywood, Illinois 60153 |
| JUDY MARIE HAWTHORNE | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO) | 362 Oswego Street Park Forest, Illinois 60466 |
| CHESTER LeSURE | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO) | 15915 Finch Avenue Harvey, Illinois 60426 |
| CELIA DUNCAN | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO) | 400 Cedar Ridge Lane Richton Park, Illinois 60471 |
| DON C. PASSMORE, JR. | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO) | 4918 Mission Drive Richton Park, Illinois 60471 |
| BOBBIE J. SMITH | MEMBER OF THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY (TO BE ELECTED FROM OUTSIDE THE CITY OF CHICAGO) | 97 Norwood Blvd. Park Forest, Illinois 60466 |

| * | SIGNATURE | STREET AND NUMBER | CITY, TOWN, OR VILLAGE | COUNTY |
|---|---|---|---|---|
| 1 | Alice Young | 1614 Ingrid Ln. | Chgo. Hts | COOK COUNTY ILLINOIS |
| 2 | Frances Harris | 1622 Ingrid Ln. | Chgo. Hts | COOK COUNTY ILLINOIS |
| 3 | Tommy Young | 1614 Ingrid Ln. | Chgo. Hts | COOK COUNTY ILLINOIS |
| 4 | Kind Smith | 932 East 16th Street | Ford Heights | COOK COUNTY ILLINOIS |
| 5 | Lee Franklin | 504 Lowe AVE | Chgo. Hts | COOK COUNTY ILLINOIS |
| 6 | Ted Moore Sr. | 1424 Parnell Ave | Chicago Hts. | COOK COUNTY ILLINOIS |
| 7 | Bridgett R Estes | 1315 Mason Ct. | Chgo Hts | COOK COUNTY ILLINOIS |
| 8 | Patricia Bank | 271 W Hickory St | Chgo Hts | COOK COUNTY ILLINOIS |
| 9 | LC. Horton | 1431 Green | Chgo Hts | COOK COUNTY ILLINOIS |
| 10 | Vesta Horton | 1434 Green St. | Chgo Hts | COOK COUNTY ILLINOIS |

## AFFIDAVIT OF CIRCULATOR

STATE OF ILLINOIS
COUNTY OF COOK } ss.

I, LAWRENCE STRINGFELLOW (print name of circulator), do hereby certify that I am a registered voter of the political division for which the candidates are seeking election; that I reside at, and am registered to vote at, 1105 PARKVIEW (Number and Name of Street), in Chgo. Hts, Ill. 60411 (Name of City, Town or Village), in the County of Cook, and the State of Illinois, and that the signatures on this sheet were signed in my presence and are genuine, and that none of the signatures on this sheet were signed more than 90 days preceding the last day for filing of this petition, and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition registered voters of the County of Cook, outside the City of Chicago, State of Illinois, and that their respective residences are correctly stated as above set forth.

Lawrence Stringfellow
(Signature of circulator)

Subscribed and sworn to before me, this 3rd day of August A.D., 1990, by LAWRENCE STRINGFELLOW (print name of circulator)

"OFFICIAL SEAL"
Thelma Galderio
Notary Public, State of Illinois
My Commission Expires 3/10/93

Thelma Galderio
Signature of Notary Public

My C[illegible]

SEAL

SHEET NO. 1

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

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OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY, A NEW POLITICAL PARTY, AND TO EACH OF THE FOLLOWING CANDIDATES OF THE HAROLD WASHINGTON PARTY:

COUNTY-WIDE
BARBARA J. NORMAN
JANICE H. ROBINSON
DONALD PAMON
HELDIA R. RICHARDSON
TOMMY BREWER
CHARLES W. ALEXANDER
DOROTHY C. HOGAN
WILL LAWRENCE
KENNETH G. HOPKINS

INSIDE THE CITY OF CHICAGO
R. EUGENE PINCHAM
ROBERT E. PINCHAM, JR.
BARBARA J. NORMAN
PERCY V. COLEMAN
VIVIAN D. STEWART-TYLER
JAMES A. DEANES
DINO F. McNEAL
MARY KING CRISS
DAVID T. PERSONS
HELEN E. JONES

OUTSIDE THE CITY OF CHICAGO )
ROBERT E. BROOKS, JR. )
MELLO SAM H. CLORA )
JUDY MARIE HAWTHORNE )
CHESTER LeSURE )
CELIA DUNCAN )
DON C. PASSMORE, JR. )
BOBBIE J. SMITH )

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VERIFIED OBJECTOR'S PETITION

Now come Dorothy Reed residing and registered to vote at 3670 South Wabash, Chic[redacted]Illinois, 60653 and Valerie A. Sutton residing and registered to vote at 6431 South Greenwood Avenue, Chicago, Illinois, 60637; and Patton L. Feichter residing and registered to vote at 141 Hastings, Elk Grove, Illinois, 60007; and Ervin S. Ricks residing and registered to vote at 8721 Springfield, Skokie, Illinois 60076; and David Barrera residing and registered to vote at 11578 South Prarie [sic], Chicago, Illinois, 60628 (Hereinafter sometimes referred to as "Objectors") and each and all of them state that their respective addresses are as stated, and that each and all of them are legal voters of the County of Cook.

The Objectors, each and all of them, state that their interest in filing the following objections is that of citizens desirous of seeing that the election laws governing the filing of nomination papers for new political parties in the County of Cook are properly complied with.

The Objectors make the following objections to the nomination papers of the Harold Washington Party



("HWP"), a new political party in the County of Cook, and to each of the following candidates of the HWP –

COUNTY OF COOK COUNTY-WIDE:
BARBARA J. NORMAN – President of the County Board of Commissioners
JANICE H. ROBINSON – States Attorney
DONALD PAMON – Assessor
HELDIA R. RICHARDSON – Clerk
TOMMY BREWER – Sheriff
CHARLES W. ALEXANDER – Treasurer
DOROTHY C. HOGAN – Superintendent of Educational Services
WILL LAWRENCE – Commissioner of the Board of Appeals
KENNETH G. HOPKINS – Commissioner of the Board of Appeals

INSIDE THE CITY OF CHICAGO: [Member of the County Board of Commissioners – Cook County]
R. EUGENE PINCHAM
ROBERT E. PINCHAM, JR.
BARBARA J. NORMAN
PERCY V. COLEMAN
VIVIAN D. STEWART-TYLER
JAMES A. DEANES
DINO F. McNEAL
MARY KING CRISS
DAVID T. PERSONS
HELEN E. JONES

OUTSIDE THE CITY OF CHICAGO: [Member of the County Board of Commissioners – Cook County]
ROBERT E. BROOKS, JR.
MELLO SAM H. CLORA
JUDY MARIE HAWTHORNE
CHESTER LeSURE
CELIA DUNCAN
DON C. PASSMORE, JR.
BOBBIE J. SMITH

– all nominees of the HWP to be voted upon at the General Election to be held on November 6, 1990. The Objectors further state that said nomination papers are insufficient in law and in fact for the following reasons:

1. The pertinent provisions of §10-2 of the Illinois Election Code (Ill.Rev.Stats., Ch. 46, §1-1 et seq.) provide as follows:

> "In the case of a petition to form a new political party *within a political subdivision* in which offices are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. . . . Each sheet of such petition must contain a *complete list of the names of the candidates of the party for all offices to be filled in the political subdivision, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district.*"
>
> (Emphasis added)

The nomination papers seek to form a "new political party in the County of Cook." The County of Cook is a "political subdivision" (see, e.g., Election Code §1-3(6) and §7-4(6)). The nomination papers filed by the HWP consist only of two district components: (i) the component consisting of county-wide and "inside the city of Chicago" district non-judicial candidates; and (ii) the component consisting of county-wide and "outside the city of Chicago" district non-judicial candidates.

The nomination papers fail to list candidates for any of the eighteen (18) judicial vacancies to be elected in the



County of Cook at the November 6, 1990 General Election. Thus, the nomination papers are in violation of the foregoing mandatory requirements of §10-2 in that:

(a) The nomination papers filed by the HWP (including both district components) fatally do not contain a "complete list of the names of the candidates of the party for all offices to be filled in the political subdivision" of the County of Cook. Specifically, the nomination papers fail to list candidates for the following judicial offices that are scheduled to be filled county-wide from the County of Cook at the November 6, 1990 General Election:

<u>Supreme Court Vacancies</u>
Hon. Seymor Simon
Hon. Daniel P. Ward

<u>Appellate Court Vacancies</u>
Hon. R. Eugene Pincham
Hon. William R. Quinlan
Hon. John J. Stamos
Hon. John J. Sullivan
Hon. William S. White

<u>Circuit Court Vacancies</u> (County-wide)
Hon. Arthur J. Cieslik
Hon. Richard J. Fitzgerald
Hon. Jacques F. Heilingoettr
Hon. Frank R. Petrone
Hon. Richard L. Samuels
Hon. Adam N. Stillo

<u>Additional Judgeship</u>

(b) Secondly, the Cook County territory described as "inside the city of Chicago" is a "district" (as defined in Chapter 46, §1-3(14) of the Election Code) for purposes of electing judicial offices in said portion of

the County of Cook. The nominating petition district "component" sheets consisting of "inside the city of Chicago" candidates, defectively fails to list: (i) the judicial offices referred to in subparagraph (a) above and (ii) the following judicial offices that are scheduled to be elected from inside the city of Chicago at the November 6, 1990 General Election:

Cook County Circuit Court Vacancies
(Inside the City of Chicago)

Hon. Roger J. Kiley, Jr.
Hon. Blanche M. Manning
Hon. John J. McDonnell

(c) Thirdly, the Cook County territory described as "outside the city of Chicago" (or suburbs "only") is a "district" (as defined in Chapter 46, §1-3(14) of the Election Code) for purposes of electing judicial offices in said portion of the County of Cook. The nominating petition district "component" sheets consisting of "outside the city of Chicago" candidates, defectively failed to list: (i) the judicial offices referred to in subparagraph (a) above and (ii) the following judicial offices that are scheduled to be elected form [sic] outside the city of Chicago at the November 6, 1990 General Election:

Cook County Circuit Court Vacancies
(Outside the City of Chicago)

Hon. George M. Marovich
Hon. Dean M. Trafelet

For the reasons set forth within this paragraph, namely, the failure to include a Cook County judicial slate, the



nomination papers of the HWP violate the aforesaid provisions of §10-2 of the Election Code which require that each sheet of a new political party petition shall contain a "complete list" of the names of candidates for each office to be filled in the political subdivision at-large.

The nomination petition of the HWP, fails to contain a requisite judicial slate from the (i) inside and (ii) outside the city of Chicago judicial districts, which violates the pertinent provisions of §10-2 which requires that sheets comprising each district component of a new political party petition shall contain a "complete list" of the names of candidates for each office to be filled in the particular district component as well as the political subdivision at-large.

This aforesaid failure to file a "complete list" of candidates for all offices to be filled in the County of Cook (including the inside-the-city-of-Chicago and Outside-the-city-of-Chicago components) renders the HWP nomination papers invalid.

2. Pursuant to the pertinent provisions of §10-2 of the Election Code:

> "In the case of a petition to form a new political party within a political subdivision in which offices are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of a political subdivision and signed only by qualified electors who are residents of such district. . . . Each component of the petition from each district from which an officer is to be elected must be

> signed by qualified voters of the district equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district."

In this regard, §10-2 further provides that for a state-wide new political party, the minimum petition signatures shall "total 1% of the number of voters who voted at the next preceding State-wide general election or 25,000, whichever is less" and that:

> (W)henever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide new political party petitions at the next preceding State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition."

As defined in §1-3(14) of the Election Code, the territory "inside the city of Chicago" and the territory "outside the city of Chicago" each constitute a "district". Consistent with this and the aforesaid §10-2 district component requirements, the proponents filed nomination papers with two district components:

(i) the inside the city of Chicago "district" (including County at-large candidates) and (ii) the outside the city of Chicago "district" (including County at-large candidates). Also, the requirement of 25,000 signatures was less than 1% of the vote at the next preceding general State-wide election.



Applying these provisions to the nomination papers herein, the minimum signature requirement for the "outside the city of Chicago" district of the nomination papers is 25,000 signatures. However, the "outside the city of Chicago" district of the nomination papers contain on their face a total of no more than 7,560 purported valid signatures of electors residing in the portion of Cook County outside the city of Chicago.

Consequently, the HWP nomination papers are void and invalid as they lack the necessary minimum of 25,000 valid signatures of electors residing in the suburban area of the County of Cook, as required by §10-2 of the Election Code.

3. The Objectors further state that the "Harold Washington Party" is an "established political party" in the city of Chicago pursuant to, and as defined by, Article 10 of the Illinois Election Code. The nomination papers filed herein purport to create a "new political party" in the County of Cook, with the name "Harold Washington Party".

These nomination papers directly violate the express mandate of Article 10 of the Election Code which states that a "new political party" petition for nomination:

> "(S)hall not bear the same name as, nor include the name of, *any* established political party as defined in this article."
>
> (Emphasis added)

The nomination papers at issue bear the name of an already "established political party," the "Harold Washington Party" and, as such, violate the §10-5 prohibition against a new political party bearing "the same name" of

an established political party. Accordingly, this Honorable Board should order that the Harold Washington Party designation should be stricken from the ballot. See, e.g., *Ballentine v. Bardwell*, 132 Ill.App.3d 1033, 478 N.E.2d 500 (1st Dist., 1985); *Doty v. Representation for Every Person (REP) Party*, 97 Ill.App.3d 316, 422 N.E.2d 1156 (1st Dist., 1981).

4. Pursuant to the pertinent provisions of §10-2 of the Election Code:

> "A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible for nomination as a candidate of a new political party for election in that general election."
>
> (Emphasis Added)

One of the listed candidates on the HWP nomination papers, R. Eugene Pincham, was a Democratic Party candidate on the March 20, 1990 Party Primary ballot running for the office of President of the County Board of Commissioners as well as County Commissioner from inside the city of Chicago. Mr. Pincham was defeated in his President of the County Board of Commissioners candidacy, and another Democratic Party candidate was proclaimed as the successful Democratic Party nominee by the Cook County Canvassing Board. In view of the aforesaid provisions of §10-2, Mr. Pincham is "ineligible" and not qualified to run as a new political party candidate for election at the November 6, 1990 General Election. However, on August 6, 1990, R. Eugene Pincham, as required by §10-5 of the Election Code, filed a sworn statement of candidacy averring that he was "qualified"



to run for office as a candidate of the Harold Washington Party. Mr. Pincham, however, is not legally qualified as a Harold Washington Party new political party candidate and, therefore, his statement of candidacy is false and invalid and the nomination papers must be stricken.

5. The Objectors state that the nomination papers of the Harold Washington Party to form a new political party in the County of Cook ("Nomination Papers") pursuant to the pertinent provisions of Sec. 10-2 of the Election code require 25,000 signatures from qualified electors of the County of Cook, residing solely within the City of Chicago (hereinafter referred to as "City" petitions) and a further 25,000 signatures from qualified electors of the County of Cook, excluding the City of Chicago, (hereinafter referred to as "Suburban" petitions). The nomination papers are insufficient in fact and in law for the following reasons:

(a) Said nomination papers contain the names of numerous persons who did not sign in their own proper person, and these signatures are not genuine, as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNATURE NOT PROPER AND NOT GENUINE", attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(b) Said nomination papers contain the names of numerous persons who are not in fact duly qualified and registered voters at the addresses shown Illinois as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNER NOT REGISTERED AT ADDRESS SHOWN", attached hereto and made a part hereof, all

of said signatures being in violation of the Illinois Election Code.

(c) Said nomination papers contain the names of numerous persons who are not in fact residents of and registered voters of the said City of Chicago on the City petitions as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNER NOT IN DISTRICT" (CHICAGO COMPONENT), attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(d) Said nomination papers contain the names of numerous persons who are not in fact residents of and registered voters of the said Suburban area of Cook County on the Suburban petitions as more fully set forth in the Appendix-Recapitulation under the column designated "SIGNER NOT IN DISTRICT" (SUBURBAN COMPONENT), attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(e) Said nomination papers contain the names of numerous persons who signed the petition more than once, the second and any subsequent signatures being invalid. The duplicate signatures are more fully set forth in the Appendix-Recapitulation under the column designated "DUPLICATE SIGNATURES", attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(f) Said nomination papers contain the names of numerous persons for whom either no residence is set forth or the address is incomplete as more fully set forth, in the Appendix-Recapitulation under the column



designated "INCOMPLETE ADDRESS", attached hereto and made a part hereof, all of said signatures being in violation of the Illinois Election Code.

(g) Said nomination papers contain sheets of signatures, the circulator of which did not sign his name thereto and therefore, all of said signatures on these circulators' sheets are in violation of the Illinois Election Code.

(h) Said nomination papers contain the names of these persons as circulators of petition sheets who did not sign petition sheets in their own proper persons, and said signatures are not genuine and are forgeries, and therefore, all of said signatures on these circulators' sheets are in violation of the Illinois Election Code.

(i) Said nomination papers contain the names of numerous persons in the capacity of circulators who are not in fact duly qualified and registered voters at the address shown as more fully set forth in the Appendix-Recapitulation under the column designated "CIRCULATOR NOT REGISTERED", attached hereto and made a part hereof, all of said signatures on these sheets being in violation of the Illinois Election Code.

(j) Said nomination papers contain the names of numerous persons in the capacity of circulators who are not in fact residents of and registered voters of said City of Chicago on the City petitions, and therefore, all of said signatures on these sheets are in violation of the Illinois Election Code.

(k) Said nomination papers contain the names of numerous persons in the capacity of circulators who are not in fact residents of and

registered voters of Suburban area of the said County of Cook on the Suburban petitions, as more fully set forth in the Appendix-Recapitulation under the column designated "CIRCULATOR OF SUBURBAN PETITIONS RESIDES OUTSIDE THE SUBURBAN AREA", attached hereto and made a part hereof, all of said signatures on this sheet being in violation of the Illinois Election Code.

(l) Said nomination papers contain the names of numerous persons as circulators either for whom no residence address is set forth, or whose address is set forth incompletely, as more fully set forth in the Appendix-Recapitulation attached hereto and incorporated herein under the column designated "CIRCULATOR ADDRESS INCOMPLETE", attached hereto and made a part hereof, all of said signatures on these sheets being in violation of the Illinois Election Code.

(m) The Objectors further state that all the signatures on sheet 1889 are invalid because the purported notary public did not sign the jurat at the bottom of the sheet. The Objectors object to each and every signature on said sheet as more fully set forth in the Appendix-Recapitulation under the column designated "NO NOTARY SIGNATURE", attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

(n) The Objectors further state that all the signatures on sheet 185, 982, 1221, 1222 and 3183 are invalid because the purported notary public did not provide a notary seal at the bottom of said sheets. The Objectors



object to each and every signature on said sheets as more fully set forth in the Appendix-Recapitulation under the column designated "NO NOTARY SEAL", attached hereto and made a part hereof, all of said signatures being in violation of the statutes in such cases made and provided.

(o) Said nomination papers contain the names of persons as circulators of petition sheets who did not sign said petition sheets before a notary or other officer authorized to take acknowledgment of deeds in the state as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the column designated "CIRCULATOR DID NOT APPEAR BEFORE NOTARY", attached hereto and made a part hereof, all of said signatures on this sheet being in violation of the Illinois Election Code.

(p) The objection specified clearly evidence a pattern of fraud, false swearing and a total disregard of the Illinois Election Code. Such a pattern requires that the Electoral Board examine the validity of each and every signature (by circulator or signer) contained on the petitions, regardless of whether specified objections to such signatures have been made. On the basis of the pattern of fraud, false swearing and total disregard of the Illinois Election Code described and set forth, the Objectors hereby specifically object to each and every signature (by circulator or signer) contained on the petitions.

(q) The Objectors further state that the results of a pre-objection review of all the petition sheets circulated by Mary King Criss, Will Lawrence, Dino McNeal, Obie Roberts,

Larry Smith and Barbara Williams evidence a pattern of fraud, false swearing, forgeries, irregularities permeating their petition sheets and a total disregard for the integrity of the electoral process and that their circulator's oath be found by this Board as incredible and that all the remaining signatures on their petition sheets be stricken in their entirety.

(r) The Objectors further state that sheets 269, 769, 720, 756 to 768, 774, 775 and 3373 from the petition component that includes those candidates to be elected from the city of Chicago, are in fact petition sheets which relate to those candidates to be elected from outside the city of Chicago and therefore all signatures on said sheets, insofar as they pertain to those candidates to be elected from the city of Chicago, should be stricken in their entirety.

(s) The Objectors further state that sheets 324 to 331, 1198, 2111 and 4063 from the petition component that includes those candidates to be elected from the city of Chicago, which are in fact non-conforming petition sheets which include candidates to be elected to the office of Commissioner of the Metropolitan Water Reclamation District of Greater Chicago, Illinois. Therefore, these non-conforming sheets, which do not contain a complete slate of candidates to be elected from the County of Cook, are invalid and should be stricken in their entirety.

6. The Objectors further state that fifteen percent of all signers to the petitions for the nomination of the Harold Washington Party were examined with the result that



53% of that amount were found to be invalid and contrary to the requirements of the Election Code.

Accordingly, it is clear that the number of invalid signatures to the petitions for nomination of the Harold Washington Party is so large as to demonstrate a conscious disregard of a the [sic] statutory requirements and demonstrate strongly that virtually all of the signatures to those petitions are invalid and fail to meet the requirements of the Illinois ELection [sic] Code.

The Objectors further state that they are submitting – in conjunction with the objections set forth in paragraph 6 as well as in conjunction with all objections in this Objectors' Petition – Exhibit A, the contents of which shall be incorporated herein and made a part hereof.

WHEREFORE, the Objectors pray that this Honorable Board order that the Clerk of Cook County and the Chicago Board of Election Commissioners conduct a full-scale binder review of the allegation contained herein and in the accompanying Appendix-Recapitulation; that subpoenas issue where necessary with respect to each of the allegations herein, including without limitation to those persons identified in paragraph 5(q).

The Objectors further pray that this Honorable Board declare that the nomination papers of the Harold Washington Party and the nominations of all candidates appearing thereon be declared insufficient, null and void; not in compliance with the laws of the State of Illinois and lack the statutory minimum number of valid signatures for ballot placement and hence, invalid, and that this Honorable Board enter its decision that the Harold Washington Party and the names of all candidates

appearing on said nomination papers not be printed on the official ballot for the General Election to be held on November 6, 1990.

_____
OBJECTOR

/s/ Dorothy Reed
OBJECTOR

/s/ Valerie A. Sutton
OBJECTOR

/s/ Patton L. Feichter
OBJECTOR

/s/ Ervin S. Ricks
OBJECTOR

/s/ David Barrera
OBJECTOR

* * *

(Verification Omitted In Printing)

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STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

---

OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY, A NEW POLITICAL PARTY, AND TO EACH OF THE FOLLOWING CANDIDATES OF THE HAROLD WASHINGTON PARTY:

COUNTY-WIDE
BARBARA J. NORMAN
JANICE H. ROBINSON
DONALD PAMON
HELDIA R. RICHARDSON
TOMMY BREWER
CHARLES W. ALEXANDER
DOROTHY C. HOGAN
WILL LAWRENCE
KENNETH G. HOPKINS

INSIDE THE CITY OF CHICAGO
R. EUGENE PINCHAM
ROBERT E. PINCHAM, JR.
BARBARA J. NORMAN
PERCY V. COLEMAN
VIVIAN D. STEWART-TYLER
JAMES A. DEANES
DINO F. McNEAL
MARY KING CRISS
DAVID T. PERSONS
HELEN E. JONES

| | |
|---|---|
| OUTSIDE THE CITY OF CHICAGO | ) |
| ROBERT E. BROOKS, JR. | ) |
| MELLO SAM H. CLORA | ) |
| JUDY MARIE HAWTHORNE | ) |
| CHESTER LeSURE | ) |
| CELIA DUNCAN | ) |
| DON C. PASSMORE, JR. | ) |
| BOBBIE J. SMITH | ) |

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APPENDIX RECAPITULATION TO VERIFIED OBJECTOR'S PETITION

CITY OF CHICAGO ONLY

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Form of Appendix-Recapitulation Sheets for Objection to County/City Petitions (Remaining sheets omitted in printing)

APPENDIX - RECAPITULATION

SHEET NO. 1

| Line No. | Signer not registered at address shown | Signer not in district | Signature not proper person and not genuine | Incomplete address | Improper circulator | Duplicate | Circulator circulated Dem. petitions | Circulator signed Dem. petitions | Circulator circulated Rep. petitions | Circulator signed Rep. petitions | Signed Dem petitions | Signed Rep petitions | Duplicate signatures | Other (Circulator not registered) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | X | | X | | | | | | | | | | | |
| 2. | X | | X | | | | | | | | | | | |
| 3. | X | | X | | | | | | | | | | | |
| 4. | X | | X | | | | | | | | | | | |
| 5. | X | | X | | | | | | | | | | | |
| 6. | X | | X | | | | | | | | | | | |
| 7. | X | | X | | | | | | | | | | | |
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| 9. | X | | X | | | | | | | | | | | |
| 10. | X | | X | | | | | | | | | | | |

NOTARY _____

T. S. _____

O. _____

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

---

OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY, A NEW POLITICAL PARTY, AND TO EACH OF THE FOLLOWING CANDIDATES OF THE HAROLD WASHINGTON PARTY:

COUNTY-WIDE
BARBARA J. NORMAN
JANICE H. ROBINSON
DONALD PAMON
HELDIA R. RICHARDSON
TOMMY BREWER
CHARLES W. ALEXANDER
DOROTHY C. HOGAN
WILL LAWRENCE
KENNETH G. HOPKINS

INSIDE THE CITY OF CHICAGO
R. EUGENE PINCHAM
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MARY KING CRISS
DAVID T. PERSONS
HELEN E. JONES

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|---|---|
| OUTSIDE THE CITY OF CHICAGO | ) |
| ROBERT E. BROOKS, JR. | ) |
| MELLO SAM H. CLORA | ) |
| JUDY MARIE HAWTHORNE | ) |
| CHESTER LeSURE | ) |
| CELIA DUNCAN | ) |
| DON C. PASSMORE, JR. | ) |
| BOBBIE J. SMITH | ) |

APPENDIX RECAPITULATION TO VERIFIED OBJECTOR'S PETITION

SUBURBAN COOK

Form of Appendix-Recapitulation Sheets for Objection to County/Suburban Petitions (Remaining sheets omitted in printing)

APPENDIX - RECAPITULATION

SHEET NO. 1

| Line No. | Signer not registered at address shown | Signer not in district | Signature not proper person and not genuine | Incomplete address | Improper circulator | Duplicate | Circulator circulated Dem. petitions | Circulator signed Dem. petitions | Circulator circulated Rep. petitions | Circulator signed Rep. petitions | Signed Dem petitions | Signed Rep petitions | Duplicate signatures | Other CIRCULAT... NOT REGISTER... |
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| 1. | X | | X | | | | | | | | | | | |
| 2. | X | | X | | | | | | | | | | | |
| 3. | X | | X | | | | | | | | | | | |
| 4. | X | | X | | | | | | | | | | | |
| 5. | X | | X | | | | | | | | | | | |
| 6. | X | | X | | | | | | | | | | | |
| 7. | X | | X | | | | | | | | | | | |
| 8. | X | | X | | | | | | | | | | | |
| 9. | X | | X | | | | | | | | | | | |
| 10. | X | | X | | | | | | | | | | | |

NOTARY _____

T. S. _____

O. _____

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

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OBJECTIONS TO THE NOMINATION )
PAPERS OF THE HAROLD WASHINGTON )
PARTY, A NEW POLITICAL PARTY, AND )
TO EACH OF THE FOLLOWING )
CANDIDATES OF THE HAROLD )
WASHINGTON PARTY: )
)

COUNTY-WIDE )
BARBARA J. NORMAN )
JANICE H. ROBINSON )
DONALD PAMON )
HELDIA R. RICHARDSON )
TOMMY BREWER )
CHARLES W. ALEXANDER )
DOROTHY C. HOGAN )
WILL LAWRENCE )
KENNETH G. HOPKINS )

INSIDE THE CITY OF CHICAGO )
R. EUGENE PINCHAM )
ROBERT E. PINCHAM, JR. )
BARBARA J. NORMAN )
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DINO F. McNEAL )
MARY KING CRISS )
DAVID T. PERSONS )
HELEN E. JONES )

OUTSIDE THE CITY OF CHICAGO )
ROBERT E. BROOKS, JR. )
MELLO SAM H. CLORA )
JUDY MARIE HAWTHORNE )
CHESTER LeSURE )
CELIA DUNCAN )
DON C. PASSMORE, JR. )
BOBBIE J. SMITH )

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EXHIBIT "A" TO VERIFIED OBJECTOR'S PETITION

Form of Appendix - Recapitulation Sheets for Exhibit "A" to Verified Objector's Petition Remaining sheets omitted in printing)

SHEET NO. 43

| Line No. | Signer not registered at address shown | Signer not in district | Signature not proper person and not genuine | Incomplete address | Improper circulator | Duplicate | Circulator circulated Dem. petitions | Circulator signed Dem. petitions | Circulator circulated Rep. petitions | Circulator signed Rep. petitions | Signed Dem petitions | Signed Rep petitions | Duplicate signatures | Other |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | X | | X | X | | | | | | | | | | |
| 2. | X | | X | | | | | | | | | | | |
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| 9. | X | | X | | | | | | | | | | | |
| 10. | | | X | | | | | | | | | | | |

NOTARY

T.S. 10

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BEFORE THE DULY CONSTITUTED
ELECTORAL BOARD FOR THE
COUNTY OF COOK, ILLINOIS

| | | |
|---|---|---|
| DOROTHY REED, et al., Objectors, | ) | |
| v. | ) | No. |
| THE HAROLD WASHINGTON PARTY, Respondents. | ) | 90 COEB CO 02 |

MOTION TO STRIKE AND
DISMISS OBJECTION NO. 1

Now comes the Harold Washington Party, and its candidates, by and through their attorneys, and moves the Cook County Officers Electoral Board for entry of an Order striking and dismissing Objection No. 1 of the Objections of Dorothy Reed, et al. ("Objection"). For the reasons stated below, Objection No. 1 is insufficient as a matter of law. This Board accordingly should strike and dismiss Objection No. 1, and permit the legitimate candidacy of the Harold Washington Party to proceed on the November, 1990 ballot.

BACKGROUND

On August 6, 1990, the Harold Washington Party ("HWP") filed with the office of the Clerk of Cook County, Illinois, nomination petitions for certain offices in the November, 1990 general election ("petitions"). The HWP petitions were filed to form a new political party in Cook County and for the purpose of being placed on the November ballot. Consistent with the requirements of

Ill.Rev.Stat., Ch. 46, Sec. 10-2, the HWP's petition consisted of two separate components, one for each district from which an officer is to be elected.

On August 13, 1990, the Objector filed a petition setting out six (6) objections to the HWP nominating petitions. Objection No. 1 specifically alleged that the HWP nomination papers were void and invalid as they faile dto [sic] offer candidates for eighteen (18) judicial offices in the November election, in the Supreme, Appellate and Circuit Courts.

## ARGUMENT

The Objector attempts to argue that the nomination papers of the Harold Washington Party ("HWP") are in violation of the requirement set forth in Chapter 46, section 10-2 of the Illinois Revised Statutes ("Section 10-2"), which states in pertinent part:

> Each sheet of such petition must contain a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district.

Objector argues that the HWP nomination papers are invalid under Section 10-2, because the Party did not list candidates for any of the eighteen (18) judicial vacancies in Cook County. Additionally the Objector argues that the Cook County territory described as "inside the City of Chicago" and that described as "outside the City of Chicago" are "districts" for purposes of electing judicial



offices in said positions of the County of Cook where the HWP is running a slate of countywide candidates.

These arguments are meritless as a matter of law. At the outset, there is simply no dispute that: judicial offices, those held by Supreme Court and Appellate Court Justices, as well as Circuit Court Judges, are offices of the State and *not* the County, (Ill. Const. 1970, Arts. VI, VII); (a) "judicial districts" are distinct and separate from "county board" or countywide districts, (Chapter 46, Ill.Rev.Stat., section 1-3(14); (b) a nomination petition to form a new political party county wide need not and should not have a slate of judicial candidates (Chapter 46, Ill.Rev.Stat., Section 7-12(1), (2); and, (c) the City of Chicago are "districts" for purposes of electing judicial offices in said positions of the County of Cook where the HWP is running a slate of county wide candidates.

In light of these undisputed facts, the Objector has simply missed the mark. The Objector attempts to create a legal issue where there is none by treating "judicial districts" as though they were the same as "county board districts" or county wide districts, a treatment the statute neither makes nor permits. Ill.Rev.Stat., Ch. 46, Section 1-3(14) defines "district" to mean any area which votes as a unit for the election of any officer . . . [to include] legislative, congressional and judicial districts, judicial circuits, county board districts, municipal and sanitary district wards, school board districts, and precincts," *Separate* nomination papers are required for that separate entity known as a "judicial district." Indeed, Ill.Rev.Stat., Ch. 46, Section 7-12(1), relates to nominations to be made for State, congressional and *judicial office*, while chapter 46, section 7-12(2) relates to nominations made for county

offices or trustees for sanitary district. And, Section 10-2 of the Election Code states:

> Any group of persons hereafter desiring to form a new political party throughout the state, or in any congressional, legislative or *judicial district . . . shall file with the State Board of Elections* a petition, as hereinafter provided; and any such group of person [sic] hereafter desiring to form a new political party within any *county* shall file such petition with the County Clerk.

At no time, under law, was the HWP required to file two separate petitions – one with the State and one with the County in order to form a new County political party. Section 10-2 of the Code specifically states "in the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at large, such petition shall consist of separate "components" for each district from which an officer is to be elected." That is exactly what the party filed, a single petition consisting of separate components for each "county board district" (not judicial district) from which an officer is to be elected. Because judicial petitions *must* be filed with the State Board of Elections, judicial candidates necessarily are not a requisite component of "new party" filing within a county district. Otherwise, the statutorily recognized distinction between judicial and other districts is meaningless and the statutorily mandated filing procedures would have to be ignored.

The HWP met its obligation by filing a single petition, not two different petitions for two distinctly



different types of districts, with the office of the Clerk of Cook County.*

The absurdity of the Objector's strained interpretation of Section 10-2 of the Election Code is self-evident. Under the Objector's argument, any office voted on in Cook County – regardless of whether it is a County office or whether the law expressly recognizes the office to be of a different district or character – is subject to Section 10-2. Under this interpretation, there is no principled basis to distinguish judicial offices from the offices of United States Senator, Representatives in Congress, Governor and Lieutenant Governor, Attorney General, Secretary of State, Comptroller, Treasurer, Trustee of the University of Illinois, State Senators, Representatives in the General Assembly and Commissioners of the Metropolitan Water Reclamation District of Greater Chicago. In each case, like judges, the office *is* voted upon in the county, even though the "district" subject to the election is not the same as the "district" for which county officers run. This Board obviously cannot require HWP to tender candidates for these state and national offices. It can do no more with respect to judicial offices either.

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* See also, 1990 Primary and General Election Calendar for Chicago: August 6, 1990 "Last day to file new political party nominating petitions; Federal, State, Legislative, and Judicial candidates file nominating petitions in the principal office of the State Board of Elections. Candidates for Commissioner of the Metropolitan Water Reclamation District of Greater Chicago *and for County Office* file nominating petitions with the office of the Clerk of Cook County. Section 10-6.

Election authorities corroborate the plan reading of the ignored by the Objector. The State of Illinois Candidate's Guide for 1990, issued by the State Board of Elections, states under its heding [sic] of "New Political Candidates":

> A petition to form a new political party for County-wide offices shall contain a complete list of candidates for such party for all offices (including all *county board districts*) to be filled at the next election.
>
> *Id.* at 27.

It also states that County officers are:

> Clerks, Treasurers, Sheriffs, Assessors, Commissioners, County Board Members and Superintendents of Educational Service Regions.
>
> *Id.* at 26.

The HWP filed a petition to form a new political party for *county-wide* offices, not State judicial offices, and in so doing has proffered a complete list of candidates. Nowhere does the Election Code state or suggest that in order to form a new political party for County-wide office one must file two separate petitions, one for county offices and the other for State judicial offices.

To suggest that judicial offices are a necessary element of a county slate is specious. Under Chapter 46, all references to filing petitions for judicial offices and county-wide offices are separate. And, of course, most importantly, the Illinois State Constitution makes clear the separation of judicial offices from County offices. The local government article of the Constitution relating to county officers does not once mention or provide for judicial candidates (Ill. Const. 1970, Art. VII, sec. 4); the



Constitution vests the judicial power in a "Supreme Court, an Appellate Court and Circuit Courts" (Ill. Const. 1970, art. VI, sec. 1). As stated by the Illinois Supreme Court:

> *Only one unified court system operating statewide is contemplated.* Article VI of the 1970 Constitution does not contemplate nor does it authorize the exercise of any control over or permit the imposition of a burden on the judicial system by an local entity.
>
> *The administration of justice under our Constitution is a matter of Statewide concern and does not pertain to local government or affairs.* (Emphasis added.) *Id.* at 542; Accord *Orenic v. Ill. State Labor Relations Board*, 127 Ill.2d 45, 480 (1989); *Drury v. County of McLean*, 89 Ill.2d 417, 423-24 (1982); *County of Kane v. Carlson*, 116 Ill.2d 186, 207-08 (1987).

For example, Article 7, Section 4 of the Illinois Constitution (c) states that "elected County officials shall be elected for terms of four years at general elections by law." This provision is inapplicable to judicial candidates since the Supreme and Appellate Court Justices are elected to terms of ten years, and regular Circuit Court judges to terms of six years. The same provision of the Constitution states that "offices other than the sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance." Judges, again treated as a completely distinct institution, are subject to no such action.

*Ampersand, Inc. v. Finley*, 61 Ill.2d 537 (1975)*

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*Consistent with this careful and deliberate separation of the judiciary from county offices, Illinois law creates many differences between judicial offices and county offices.

In short, the Objector's shrewd construction of Section 10-2, unsupported by any case law or interpretation other than the Objector's own, is at odds with the enormous body of law – statutory and otherwise – which *rejects* the, in effect, unification of judicial and county offices urged by the Objector. Judicial districts are separate from county districts, according to statute. Judicial nominating petitions must be filed in a different form from that appropriate for county positions, according to statute. Judicial positions are afforded an array of protections and characteristics distinct from those enjoyed by county offices, according to the Illinois Constitution. And, judicial operations are a matter of state, not county concern, according to the Illinois Supreme Court. These principles – undisputed but simply ignored by the Objector – are each fatal to the Objector's claim.

## CONCLUSION

For the foregoing reasons, Respondents respectfully move that Objection No. 1 of the Objections of Dorothy Reed, et al., to the nominating papers of the Harold Washington Party be stricken and dismissed with prejudice.

Respectfully submitted,
THE HAROLD WASHINGTON PARTY

/s/ By Nikki M. Zollar
One of its Attorneys

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BEFORE THE DULY CONSTITUTED
ELECTORAL BOARD FOR THE
COUNTY OF COOK, ILLINOIS

| | | |
|---|---|---|
| DOROTHY REED, et al., | ) | |
| Objector, | ) | |
| | ) | No. |
| v. | ) | 90 COEB CO 02 |
| THE HAROLD WASHINGTON PARTY, | ) | |
| Respondents. | ) | |

## MOTION TO STRIKE AND DISMISS OBJECTION NO. 2

Now comes the Harold Washington Party, and its candidates, by and through their attorneys, and moves the Cook County Officers Electoral Board for entry of an Order striking and dismissing Objection No. 2 of the Objections of Dorothy Reed, et al. ("Objection"). For the reasons stated below, Objection No. 2 is insufficient as a matter of law as it is predicated on an unconstitutional premise. This Board accordingly should strike and dismiss Objection No. 2, and permit the legitimate candidacy of the Harold Washington Party to proceed on the November, 1990 ballot.

## BACKGROUND

On August 6, 1990, the Harold Washington Party ("HWP") filed with the office of the Clerk of Cook County, Illinois, nomination petitions for certain offices in the November, 1990 general election ("petitions"). The HWP petitions were filed to form a new political party in Cook County and for the purpose of being placed on the November ballot. Consistent with the requirements of

Ill.Rev.Stat., Ch. 46, Sec. 10-2, the HWP's petition consisted of two separate components, one for each district from which an officer is to be elected.

On August 13, 1990, the Objector filed a petition setting out six (6) objections to the HWP nominating petitions. Objection No. 2 specifically alleged that the HWP nomination papers were void and invalid as they "lack[ed] the necessary minimum of 25,000 valid signatures of electors residing in the suburban area of the County of Cook, as required by Sec. 10-2 of the Election Code."

## ARGUMENT

### I. THE OBJECTION SHOULD BE DENIED BECAUSE IT IS PREDICATED ON AN UNCONSTITUTIONAL PREMISE

The Objector argues that the HWP lacks 25,000 signatures from suburban Cook County needed to entitle the party to gain access to the election ballot of November, 1990. The Objector's claim is meritless. On August 6, 1990, the Harold Washington Party filed with the Office of the Clerk of Cook County, Illinois, well over 60,000 valid signatures of electors from throughout Cook County in support of placing the Party candidates on the November ballot.

A new political party in Illinois need only gather the signatures of 25,000 eligible voters on its nominating petitios [sic] in order to gain access to the ballot. *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979). In holding that the Illinois Election Code is



unconstitutional insofar as it requires new political parties in subdivisions of the State to obtain more than the 25,000 signatures necessary for those same parties to appear on the ballot in a statewide election, the Supreme Court has held that such a requirement violated the Equal Protection Clause of the Fourteenth Amendment. 99 S.Ct. 983 at 990-992.

In reaching its decision, the Court reasoned, *inter alia*, that restrictions on access to the ballot must be extremely limited for they place a burden on the " 'right of individuals to associate for the advancement of political beliefs, and the right of qualified voters regardless of their political persuasion to cast their votes effectively.' " Citing *Williams v. Rhodes*, 393 U.S. 23 (1968), the Court went on to state that the freedom to associate as a political party, a right recognized as fundamental, has diminished practical value if the party can be kept off the ballot. The Court reasoned that by limiting the choices available to voters, the State impairs the voters' ability to express their political preferences, which, of course, undercuts the single most fundamental significance under our constitutional structure, the right to vote. 99 S.Ct. 983, 990.

Stated simply, Objection No. 2 is no less than an attempt to completely circumvent the unanimous holding of the United States Supreme Court. *Socialist Workers Party*. By interpreting applicable statutes as the Objector has done – to require splitting the County [sic] County of Cook into subdistricts – for purposes of, in effect, requiring not 25,000 but 50,000 signatures for a new party to gain access to the ballot for a Cook County slate – the Objector relies on a claim that cannot withstand constitutional attack.

*Moore v. Ogilvie*, 394 U.S. 814 (1969); and *Communist Party of Illinois v. State Board of Elections*, 518 F.2d 517 (7th Cir.), cert. denied, 423 U.S. 986 (1975), are illustrative. In *Moore*, the Supreme Court struck down the provision of the Illinois Election Code which required independent candidates and new political parties needing 25,000 signatures and which required these parties to obtain at least 200 signatures from each of 50 counties within the state, as violative of the Equal Protection clause. In *Communist Party*, the Seventh Circuit held that the statute, as amended by the legislature after *Moore* to place a 13,000 signature limit on new political party signatures from any one county, was likewise a denial of equal protection. *Communist Party of Illinois v. State Board of Elections*, 518 F.2d 517 (7th Cir.), cert. denied, 423 U.S. 986 (1975). Under these well-established principles, it is simply impermissible to impose geographic/minimum signature requirements on new political parties attempting ballot status where the new political party, running *countywide*, has collected over twice as many signatures necessary to run for *statewide* office.

Such a requirement must serve a compelling state interest, or it is invalid. *American Party of Texas v. White*, 415 U.S. 767, 780-781 (1974). Further, that state interest must be achieved by means that do not "unfairly or unnecessarily burden . . . a minority party's . . . interest in the continued availability of political opportunity. *Lubin v. Panish, Registrar-Recorder of County of Los Angeles*, 415 U.S. 709, 716 (1974). As the Court in *Lubin* stated:

> "[t]he interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates



> or parties or both and it is this broad interest that must be weighed in the balance. The right of a party . . . to a place on a ballot is entitled to protection and is intertwined with the rights of voters." *Id.*

In this case, no such interest is or can be offered, nor is the purported requirement narrowly tailored to serve any such interest as the Constitution requires. To require a new county party to obtain *twice* as many signatures as statewide candidates is an affront to the "availability of political opportunity" mandated by the Supreme Court. It can serve no purpose except – by erecting artificial geographic and numerical barriers – to ensure that voters' choices are limited to those conventionally offered. Our system requires more latitude for voter preferences to be exercised, and our Supreme Court has said no less.

As Justice Rehnquist recognized in his concurring opinion in *Socialist Workers Party*, the disparate treatment of candidates in the Illinois Election Code (with respect to signature requirements) "bears no rational relationship to any state interest." *Supra*, at 993. In the instant case, the fundamental rights of at least 60,000 electors would be contravened were this Board to sustain the Objection.

## II. SECTION 10-2 IS SO VAGUE AND INCOMPREHENSIBLE THAT IT CANNOT, CONSISTENT WITH THE LAW, BE APPLIED TO DISENFRANCHISE THE HAROLD WASHINGTON PARTY

The Objector makes reference to two provisions of Sec. 10-2 of the Election Code. See Petition at ___. It is not clear that either provision cited sets forth the minimum number of signatures necessary for the HWP to achieve

ballot status as a new county-wide political party. What is clear, however, is that the second provision is inapplicable to the present situation: it refers to minimum signature requirements for a district *or* political subdivision for a new political party. Thus, in this instance only the first provision even arguably makes reference to the case at bar, inasmuch as it relates to petitions to form new political parties within a "political subdivision in which offices are to be elected from districts *and* at-large."

The question before this Board, even if signature requirements for county positions in excess of those required for statewide offices are valid, is whether the first provision cited establishes a constitutionally *clear* standard for signatures on new party petitions for political subdivisions. The answer is a resounding "No".

The pertinent provision of Sec. 10-2 of the Election Code states:

> In the case of a petition to form a new political party within a political subdivision in which offices are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of a political subdivision and signed only by qualified electors who are residents of such district . . . Each component of the petition from each district from which an officer is to be elected must be signed by qualified voters of the district equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. *The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision*



> *equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such political subdivision* at which an officer was elected to serve the political subdivision at large.

After Section 10-2 was redrafted to read as it does above, the Supreme Court, in *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979), held that to require a new political party in Illinois to collect more than 25,000 signatures on its nominating petitions was unconstitutional. By requiring the petition to be signed by a "total of qualified voters of the entire political subdivision equaling in number not less than 5% of the number of voters who voted at the next preceding regular election . . . ", the statute is directing collection of substantially more than 25,000 signatures. In fact, even that part of the provision which speaks to "signed qualified voters of the 'district' equaling in number not less than 5% of the number of voters who voted at the next preceding regular election . . . ", requires collection of over 25,000 signatures.

Assuming, arguendo, that this Board can somehow overcome the constitutional deficiencies of this statutory provision, it must still attempt to answer the question: which subsection applies? – That which speaks to collection of signatures, including all components, or that which speaks to separate districts? We submit that, unfortunately, this question cannot be resolved. The statute, even if embracing constitutional mathematics, does not embrace constitutional clarity. As stated by Justice Rehnquist, in referring to the Illinois Election Code, Section 10-2: "[t]he courts having knocked out key panels in an otherwise symmetrical mosaic, it is not surprising that

*little sense can be made of what is left." Socialist Workers Party,* at 993.

Given this fact, the provision cannot be used to disenfranchise the 60,000 voters who have sought placement of the HWP on the ballot. *In Merz v. Municipal Officers Electoral Board,* 50 Ill. Dec. 520 (1st Dist., 1981), the Appellate Court was called upon to interpret that provision of the election code (Section 10-3), which purported to set out a standard for the minimum number of signatures needed to be obtained by an independent candidate to secure placement on the ballot. The Court held that despite the fact that the candidates failed to comply with the minimum statutory signature requirement *under the interpretation of the Appellate Court,* where the candidates had demonstrated at "least a minimal appeal to the voters" and the statutory provision was almost incomprehensible, the "interest of justice . . . are best served by allowing . . . [the] candidates to appear on the ballot. . . ." The hopeless ambiguity and internally contradictory nature of Section 10-2 requires no less here.

## CONCLUSION

For the foregoing reasons, the Respondents respectfully move that Objection No. 2 of the Objections of Dorothy Reed, et al., to the nominating papers of the Harold Washington Party be stricken and dismissed with prejudice.

Respectfully submitted,

THE HAROLD WASHINGTON PARTY

/s/ By Nikki M. Zollar
One of its Attorneys

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**BEFORE THE DULY CONSTITUTED ELECTORIAL [sic] BOARD FOR THE COUNTY OF COOK, ILLINOIS**

| | | |
|---|---|---|
| DOROTHY REED, et al<br>Objectors,<br>v.<br>THE HAROLD WASHINGTON PARTY,<br>Respondent. | ) | No. 90 COEB CO 02 |

## MOTION TO STRIKE AND DISMISS OBJECTION NO. 3 OF OBJECTOR'S PETITION

Now comes the HAROLD WASHINGTON PARTY and Moves this Board to Strike and Dismiss Objection No. 3 of the objector's petition, and in support of their Motion states as follows:

1. The respondents admit that the HAROLD WASHINGTON PARTY is an established political party in the City of Chicago as defined by Article 10 of the Illinois' election code.

2. The respondents admit that the nomination papers filed on August 6, 1990 for County Wide offices for the November 6, 1990 election are filed as a New political party by the HAROLD WASHINGTON PARTY which is established in the City of Chicago.

3. The respondents deny that these nomination papers directly violate the express mandate Article 10, of the Election Code. The respondents affirmatively state that Section 10-5(2) in pertinent part states as follows:

> " . . . (S)uch party shall not bear the same name as, nor include the name of any established political party as defined in this article. *This prohibition does not preclude any established political party from making Nominations in those cases in which it is authorized to do so.*" (Emphasis added)

In this case, David Reed, Sr., HAROLD WASHINGTON PARTY Chairman, and Nancy Jefferson, Co-founder and Charter Member of the HAROLD WASHINGTON PARTY, and other officers of the HAROLD WASHINGTON PARTY expressly authorized the Chairman to file Nominating Petitions at the County Level in the name of the HAROLD WASHINGTON PARTY and support these Nominations for County Wide office on November 6, 1990. See the affidavits of David Reed, Sr. and Nancy Jefferson attached hereto and made a part hereof by reference and marked as Exhibits "A" and "B" respectively.

Therefore the prohibitions expressed in the objectors petitions regarding the use of the Same Name as any established political party is inapplicable here since the Established HAROLD WASHINGTON PARTY expressly authorized the use of the Same Name for the new political party running Slates of Candidates for County Wide offices for the November 6, 1990.

Moreover, the objectors find no relief in the Case Law they have cited. It is clear that the primary purpose of this Law is Not to Confuse Voters who are voting in Elections for Candidates in the same political subdivisions. The objectors have routinely cited the case of *Ballentine v. Bardwell*, 132 ILL App. 3d 1033, 478 N.E.2d 500 And *Doty V. Representation for Every Person (REP) Party*, 97



ILL App.3d 316, 422 N.E. 2d1156. Neither case is on point and both are clearly distinguishable on the facts.

In *Ballantine*, the party was a different party using an established partys' name and different people making up the New Party. While in *Doty*, the REP Party was a New Party with a name that was so similar to that of the Republican Party that the Court would not allow the use of the name for fear of confusing or misleading the voters. In addition, in neither case was it the same people and the same party expressly authorizing the established party chairman to expand from a City Wide Party to a County Wide Party with the same name.

Objectors Objection No. 3 of their petition has no merit in fact or the Law and accordingly should be stricken and dismissed.

Wherefore the HAROLD WASHINGTON PARTY, respectfully request this Board to Strike and Dismiss Objection No. 3 of the Objectors Petition.

Respectfully Submitted,

/s/ Roosevelt Thomas
Roosevelt Thomas, one of the
Attorneys for the
HAROLD WASHINGTON PARTY
1 North LaSalle Street, Suite 2065
Chicago, IL 60602
(312) 641-0860

**EXHIBIT A**

STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE COUNTY OF COOK, ILLINOIS**

| | | |
|---|---|---|
| DOROTHY REED, et al | ) | |
| Objectors, | ) | No. 90 COEB CO 02 |
| v. | ) | |
| THE HAROLD WASHINGTON PARTY, | ) | |
| Respondent. | ) | |

AFFIDAVIT OF DAVID REED, SR.

I, DAVID REED, SR., on oath, depose and state:

1. That I am a resident of the City of Chicago, Court of Cook, and I reside at 951 East Hyde Park Boulevard, Chicago, Illinois.
2. I am a registered voter at the above stated address.
3. I am a member Chairman of the HAROLD WASHINGTON PARTY, an established political party in the City of Chicago which ran candidates in 1989.
4. I was elected Chairman of the HAROLD WASHINGTON PARTY in 1990 and authorized by my party to run a slate of candidates for County Wide offices for the November 6, 1990 election.
5. On August 6, 1990, the HAROLD WASHINGTON PARTY expanded from a Chicago party to a County wide party by filing a slate of candidates to run for county wide office.



6. That the Nominating petitions filed on August 6, 1990 by the HAROLD WASHINGTON PARTY were filed as a new party because that is the only method that the Statute provides for the party to expand from an established political party in the City of Chicago to a County Wide political party.
7. That no provision in the election Code provides for the expansion of an established City Wide political party to run slates of candidates County Wide, therefore, the only method for our party to expand to a County Wide party is to file on the County Level as a new political party.
8. The HAROLD WASHINGTON PARTY which is an established political party in the City of Chicago is the SAME HAROLD WASHINGTON PARTY who filed as a New Political Party for County Wide slates of candidates for the November 6, 1990 election.
9. This Affidavit is made in support of the HAROLD WASHINGTON PARTY'S motion to strike and dismiss Objection 3 of the objections filed in Petition No. COEB-CO-02.
10. Further your affiant sayeth not.

_____
DAVID REED, SR.

"OFFICIAL SEAL"
Richard L. Barnett
Notary Public, State of Illinois
My Commision Expires 11/21/93

Signed and Sworn Before me
This 20th day of August, 1990.

_____
NOTARY PUBLIC

**EXHIBIT B**

STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE COUNTY OF COOK, ILLINOIS**

| | | |
|---|---|---|
| DOROTHY REED, et al | ) | |
| Objectors, | ) | No. 90 COEB CO 02 |
| v. | ) | |
| THE HAROLD WASHINGTON PARTY, | ) | |
| Respondent. | ) | |

AFFIDAVIT OF NANCY JEFFERSON

I, NANCY JEFFERSON, on oath, depose and state:

1. That I am a resident of the City of Chicago and County of Cook, and reside at 2841 West Jackson Street, Chicago, Illinois.

2. I am a registered voter at the above mentioned address.

3. I am one of the original founders and Charter Members of the HAROLD WASHINGTON PARTY which ran a candidate for Mayor in Chicago in the 1989.

4. That I voted for David Reed, Sr. to be the new Chairman of the HAROLD WASHINGTON PARTY and authorized him to run a slate of candidates for County Wide Office for the November 6, 1990 election.



5. I support Party Chairman David Reed, Sr., and the expansion of the HAROLD WASHINGTON PARTY from a city wide party to a county wide party.

6. I support the slate of candidates of the HAROLD WASHINGTON PARTY for county wide offices for the November 6, 1990 election.

7. This affidavit is made in support of the HAROLD WASHINGTON PARTY'S motion to strike and dismiss Objection 3 of the objectives filed in Petition No. 90 COEB CO-02.

8. Further your affiant sayeth not.

NANCY JEFFERSON

Signed and Sworn Before me
This 20th day of August, 1990.

NOTARY PUBLIC

"OFFICIAL SEAL"
Richard L. Barnett
Notary Public, State of Illinois
My Commision Expires 11/21/93

STATE OF ILLINOIS )
) SS
COUNTY OF COOK )

BEFORE THE COOK COUNTY BOARD OF ELECTION

| | |
|---|---|
| DOROTHY REED, ET AL, | ) No. 90COEB |
| OBJECTORS, | ) COO2 |
| | ) Presiding, Hon. |
| VS. | ) Stanley J. |
| THE HAROLD WASHINGTON PARTY, (HWP), | ) Kusper, Cook |
| | ) County Clerk; |
| RESPONDENT. | ) Hon. Aurelia |
| | ) Pucinski Cook |
| | ) County Circuit |
| | ) Court Clerk; |
| | ) and Ernesto Borgess. |

MOTION OF THE HWP TO STRIKE AND DISMISS THE OBJECTIONS BECAUSE SAID OBJECTIONS ARE PRIMA FACIE FRAUDULENT.

* * *

[Caption Omitted]

MOTION OF THE H.W.P. TO STRIKE AND DISMISS

Now comes the H.W.P., Respondent, by and through its Co-Counsel, R. Eugene Pincham, and respectfully moves this Honorable Board of Election to strike and dismiss the alleged objections of paragraphs 5, and each subparagraph thereof, and paragraphs 6, pages 5 thru 14, of the alleged objections of Dorothy Reed, et al., Objectors, for the reasons that *said alleged objections and the 6,000 "Appendix-Recapitulation"* sheets submitted therewith and in support thereof, clearly reveal that said 6,000



*"Appendix-Recapitulation"* sheets are all the exact-same – photostatic copies of one original *"Appendix-Recapitulation"* sheet, the new-modern-revised-1990 illegal and fraudulent *Roundtabling* Objection Procedure; and said *6000 "Appendix-Recapitulation"* sheets are manifestly and obviously prima facie flagrantly fraudulent; and for such other and further reasons as hereinafter set forth.

* * *

[Signatures Omitted]

SUGGESTIONS IN SUPPORT OF H.W.P.'S MOTION TO STRIKE AND DISMISS THE ALLEGED OBJECTIONS OF PARAGRAPHS 5 AND 6.

In support of the H.W.P.'s Motion to Strike and Dismiss the alleged objections of Paragraphs 5 and 6 because the 6000 "Appendix-Recapitulation" sheets submitted in support thereof are patent-prima facie-flagrant massive fraud, the H.W.P. respectfully represents unto this Honorable Election Board,

1. Paragraphs 5,(a)(b),(c),(d), pages 9-10 of the objections, allege in pertinent part that:

> "The (HWP) nomination papers are insufficient in fact and in law for the following reasons:
>
> (a) Said (HWP) nomination papers contain the names of numerous persons who did not sign in their own proper person, and these signatures are not genuine, as more fully set forth in the *Appendix-Recapitulation* (sheets) under the column designated *"Signature Not* Proper and Not Genuine," attached hereto and made a part hereof."

(b) Said (HWP) nomination papers contain the names of numerous persons who are not in fact duly qualified and registered voters at the addresses shown Illinois (sic) as more fully set forth in the *Appendix-Recapitulation* (sheets) under the column designated "Signer Not Registered at Address Shown," attached hereto and made a part hereof."

(c) Said (HWP) nomination papers contain the names of numerous persons who are not in fact residents of and registered voters of the said City of Chicago on the city petitions as more fully set forth in the *Appendix-Recapitulation* (sheets) under the column designated "Signer not in District", (Chicago Component), attached hereto and made a part hereof,"

(d) Said (HWP) nomination papers contain the names of numerous persons who are not in fact residents of and registered voters of the said suburban area of Cook County on the suburban petitions as more fully set forth in the *Appendix-Recapitulation* (sheets) under the column designated "Signer Not In District" (Suburban Component), attached hereto and made a part hereof * * * "

2. The 6000 objections *Appendix-Recapitulation* sheets, Nos. 1-6000 purportedly are the Objector's recapitulations of the corresponding 6000 HWP petitions, Nos. 1-6000, and the signatures thereon.

3. Significantly however, the Objectors fail to state who did the *recapitulation*, who prepared the *Appendix-Recapitulation* sheets, how, under what circumstances, when or by whom the recapitulation and or appendix were prepared.



4. The 6000 *Appendix-Recapitulation* sheets, above referred to and submitted in support of said objections, are all patent, obvious, prima facie, flagrant, fraudulent, duplicate-photostatic copies of one and the same original, the new, modern, 1990, illegal roundtabling objecting procedure.

5. Practically, each and all of the Objector's *Appendix-Recapitulation* sheets 1 thru 6000, reveal, under the column "Signer not registered at address shown" the exact and same:

(1) At Line 1, the X protrudes at the right bottom into the left column designated "Signer not in District:

(2) At Line 4, the X at the bottom right does not extend to the bottom of line 4:

(3) At line 4, there is a vertical line at the left side of the column:

(4) At line 7, the X at the bottom left extends beyond the column line and into the number 7 line.

(5) At line 10, the X at the left bottom also extends across the column line and into the No. 10 column, and does not extend to the bottom line of the column.

6. Practically, each and all of the Objector's *Appendix-Recapitulation* sheets 1 thru 6000, reveal under the column "Signature not proper person and not Genuine", the exact and same:

(1) At line (1) the bottom right X extends into the adjacent right column, designated "Incomplete Address."

(2) At line (7) the bottom left of the X extends into the adjacent left column, designated "Signer not in District."

(3) At line (8) the upper left of the X extends into the adjacent left column, designated "Signer not in District" and also extends into line 7.

(4) At line (8) the bottom right of the X extends into the right adjacent column, designated "incomplete Address."

7. From the foregoing, as well as a mere cursory examination of the Objector's 6000 *Appendix-Recapitulation* sheets, it is patently obvious that that they, each and all, are photostatic duplicate copies of one and the same original.

8. From the foregoing, it is obviously apparent that the Objector photocopied an original Appendix-Recapitulation sheet which then had the X's inserted in lines 1 thru 10, under the columns "Signer not registered at Address Shown" and "Signatures not proper person and not Genuine", and that thereafter the *Appendix-Recapitulation* photostatic copies were numbered at the top left under "Sheet No.", numbers 1 thru 6000.

9. Although all the Objectors' 6000 *Appendix-Recapitulation* sheets contain the additional columns "Signer not in District", "Incomplete Address", "Improper Circulation", "Duplicate", "Circulator Circulated Dem. Petitions", "Circulator Circulated Rep. Petitions", "Circulator Signed Rep. Petitions", "Signed Dem. Petitions," "Signed Rep. Petitions," "Duplicate Signatures," "Other Circulator Not Registered." Yet, not a single X is placed in any of



said columns in the Objectors 6000 *Appendix-Recapitulation* sheets, an honest, mathematical computer improbatility [sic] – no – an impossibility.

10. From the above and foregoing, all the Objectors' 6000 *Appendix-Recapitulation* sheets are obvious photostatic-duplicate copies of an original, the new modern – 1990 illegal roundtabling objecting procedure.

11. These Objector's 6000 *Appendix-Recapitulation* sheets are a despicable, reprehensible and intolerable attempted fraud on this Honorable Election Board for which this Honorable Board should rightly hold the Objectors in contempt of this Honorable Election Board, and the HWP so prays.

12. Moreover, on August 13, 1990 when the herein mentioned objections were filed, no one had checked or compared any address or signatures on the HWP petitions with any address or signature of any registered voter on the official voters' registration card, commonly referred to as the binder, and therefore there could not have thereby been a determination that the "Signer (was) not registered at Address Shown," or that the "Signature (was) not the Proper Person and not Genuine."

13. Additionally, no one checked with or ascertained from any signature or any circulator of the H.W.P. petitions or from any other source that such signature was "Not registered at the Address Shown," or that the "Signature (was) not (that of the) proper person and not Genuine."

14. Although paragraph 5(e) at page 10 of the objections allege that

> "Said (HWP) nomination papers contain the names of numerous persons who signed the petition more than once, the second and any subsequent signatures being invalid. The duplicate signatures are more fully set forth in the *Appendix-Recapitulation* under the column designated "Duplicate Signature," attached hereto and made a part hereof * * * *"

Nevertheless, the Objectors' 6000 photostatic illegal, fraudulent roundtable objection sheets do not indicate or set forth any duplicate signatures or any duplicate names.

15. As previously stated in paragraph 8 herein, regarding the objections of paragraph 5,

subparagraph (f) "Incomplete Address"

subparagraph (g) "Petitions not Signed by Circulator"

subparagraph (h) "Forged Circulators' Signatures"

subparagraph (i) "Circulator not Registered (voters)

subparagraph (j) "Non Resident Circulators"

subparagraph (k) "Circulator of Suburban Petitions Reside Outside the Suburban Area"

subparagraph (l) "Circulator Address Incomplete"

subparagraph (o) "Circulator did not appear before Notary,"

barely any of the Objectors' *Appendix-Recapitulation* sheets set forth; contain or indicate any such circumstance.



16. Ch. 46, Section 10-8, B, Ill. Revised Statute, provides in pertinent part, as follows:

> "The Objectors' Petition * * * shall state fully the nature of the objections to the Certificate of Nomination or nominating papers or petitions in question."

17. Paragraphs 5, subparagraphs A thru S, and paragraphs 6 do not "state fully the nature of the objection to the (HWP) nominating papers" as required by aforementioned statute, for which reason said paragraphs should be stricken and dismissed, and the HWP so prays.

18. The Honorable Judge Kusper of this Honorable Election Board astutely and correctly observed and stated on Tuesday, Jan. 2, 1990, in another challenge of nominating petition, the following:

> "CONVERSELY, WE COULD HAVE SOMEONE FILE AN OBJECTION PURE SHOTGUN WITH ABSOLUTELY NO BASIS AT ALL AND WE WOULD SIT HERE AND LISTEN TO THE ARGUMENTS AND THEN WE WOULD SEND IT OUT FOR A BINDER CHECK ON SIXTY-SOME ODD HUNDRED SIGNATURES ON A PURE FISHING EXPEDITION WITH NO BASIS AT ALL TO SEE WHAT WE COULD FIND. AND THAT WOULD BE WASTING THE ASSETS OF THE OFFICE INVOLVED, THE OFFICES INVOLVED."

19. In paragraph 5, subparagraph p, pages 12-13, the Objectors' falsely assert, and in the total absence of any supportive substantive factual allegation, that "the objections specified clearly evidence a patter of fraud, false swearing and a total disregard of the Illinois Election Law * * * on the basis of the pattern of fraud, false swearing and total disregard of the Illinois Election

Code." The Objectors objected to all the HWP petition signatures; and because said Objectors' allegations are false and totally unsupported by any substantive factual allegations, as required by the aforesaid statute, paragraph P should be stricken and dismissed, and the HWP so prays.

20. The "clear evidence of a pattern of fraud, false swearing and a total disregard of the Illinois Election Law" are the Objectors' new, revised, modern, 1990 6000 false and fraudulent roundtable photostatic-duplicate *Appendix-Recapitulation* sheets, previously specified, discussed and established herein.

21. Because the Objectors' following allegations of paragraph 5, subparagraph (g), page 13, are totally factually unsupported.

> "that the results of a pre-objection review of all the petition sheets circulated by Mary King Criss, Will Lawrence, Dino McNeal, Obie Roberts, Larry Smith and Barbara Williams evidence a pattern of fraud, false swearing, forgeries, irregularities permeating their petition sheets and a total disregard for the integrity of the electoral process and that their circulator's oath be found by this Board as incredible and that all the remaining signatures on their petition sheets be stricken in their entirety."

Said allegations should also be stricken and dismissed, and the HWP so prays.

22. A mere cursory look at HWP petitions Nos. 269, 709, 720, 750 to 768, 774, 775 and 3373 clearly reveals that said petitions are for Cook County and Chicago offices, and the objectors' contrary and false allegations of paragraph 5, subparagraph (r) at page 13, that said sheets



> "are in fact petition sheets which relate to those candidates to be elected from outside the city of Chicago and therefore all signatures on said sheets, insofar as they pertain to those candidates to be elected from the city of Chicago, should be stricken in their entirety,"

are factually unsupported and are adverse to the face of said petitions, for which reasons the objections thereto should be stricken and dismissed, and the HWP so prays.

23. Likewise, a mere cursory examination of HWP petitions Nos. 324-331, 1198, 2111 and 4063 discloses that said petitions are for County and city offices for which Chicago voters may vote, and therefore the Objectors' contrary allegations of Paragraph 5, subparagraph S, pages 13-14, that

> "sheets 324 to 331, 1198, 2111 and 4063 from the petition component that includes those candidates to be elected from the city of Chicago, which are in fact non-conforming petition sheets which include candidates to be elected to the office of Commissioner of the Metropolitan Water Reclamation District of Greater Chicago, Illinois. Therefore, these non-conforming sheets, which do not contain a complete slate of candidates to be elected from the County of Cook, are invalid and should be stricken in their entirety,"

are false, factually unsupported and should therefore to stricken and dismissed, and the HWP so prays.

24. Paragraph 6 at page 14 of the objections falsely assert, and in the total absence of any substantive factual supportive allegations, that

> "The Objectors further state that fifteen percent of all signers to the petitions for the nomination of the Harold Washington Party were examined

with the result that 53% of that amount were found to be invalid and contrary to the requirements of the Election Code.

Accordingly, it is clear that the number of invalid signatures to the petitions for nomination of the Harold Washington Party is so large as to demonstrate a conscious disregard of the statutory requirements and demonstrate strongly that virtually all of the signatures to those petitions are invalid and fail to meet the requirements of the Illinois Election Code."

25. The Objectors do not set forth how or in what manner, or by whom, or when "15% of all signers to "the petitions for the nomination of the Harold Washington Party were examined."

26. As previously stated herein, no one compared the HWP petition signatures with the official voters' signatures in the binders, no one checked with or talked to the HWP petition signators or petition circulators, or anyone else.

Thus, the Objectors' false and factually baseless assertions that an examination of 15% of the signers of the HWP petitions revealed "that 53% of that amount were found to be invalid and contrary to the requirements of the should be stricken and dismissed, and the HWP so prays.

27. Again, it is the Objectors, by and thru their aforesaid alleged objections and their 6000 false and fraudulent photostatic *Appendix-Recapitulation* sheets, who "demonstrate a conscious disregard by the statutory requirements * * * and fail to meet the requirements of the Illinois Election Code."



28. From and by reason of the above and foregoing there is no reason and no factual or legal basis has been asserted, shown or established for a "full scale (or for any other) binder review, as requested by the Objectors, and such request should therefore be denied, and the HWP so prays.

29. The HWP respectfully prays, by reason of the above and foregoing, that each and every request of the HWP herein before prayed be granted and that the Objectors' objections to the HWP petitions be stricken, dismissed and held for naught.

* * *

[Signatures and Certification omitted]

David Reed

/s/ R. Eugene Pincham
R. Eugene Pincham

Subscribed and sworn to before me this *20th* day of *August 1990.*

Notary Public

Seal

My Commission Expires:___

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

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OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY, A NEW POLITICAL PARTY, AND TO EACH OF THE FOLLOWING CANDIDATES OF THE HAROLD WASHINGTON PARTY:

No. 90 COEB CO 02

COUNTY-WIDE

BARBARA J. NORMAN
JANICE H. ROBINSON
DONALD PAMON
HELDIA R. RICHARDSON
TOMMY BREWER
CHARLES W. ALEXANDER
DOROTHY C. HOGAN
WILL LAWRENCE
KENNETH G. HOPKINS

INSIDE THE CITY OF CHICAGO

R. EUGENE PINCHAM
ROBERT E. PINCHAM, JR.
BARBARA J. NORMAN
PERCY V. COLEMAN
VIVIAN D. STEWART-TYLER
JAMES A. DEANES
DINO F. McNEAL
MARY KING CRISS
DAVID T. PERSONS
HELEN E. JONES



OUTSIDE THE CITY OF CHICAGO

ROBERT E. BROOKS, JR.
MELLO SAM H. CLORA
JUDY MARIE HAWTHORNE
CHESTER LeSURE
CELIA DUNCAN
DON C. PASSMORE, JR.
BOBBIE J. SMITH

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MEMORANDUM IN SUPPORT OF THE VERIFIED OBJECTORS' PETITION AND IN RESPONSE TO PETITIONER'S MOTIONS TO STRIKE OBJECTIONS

I. FAILURE TO FILE A COMPLETE SLATE OF CANDIDATES FOR ALL OFFICES TO BE FILLED IN THE POLITICAL SUBDIVISION OF THE COUNTY OF COOK INVALIDATES THE HAROLD WASHINGTON PARTY NOMINATION PAPERS. (Paragraph 1(a) of the Objectors' Petition)

§10-2 of the Election Code requires that:

> "In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at-large, such petition shall consist of separate components for each *district* from which an officer is to be elected. . . . Each sheet of such petition must contain a *complete list of the names of the candidates of the party for all offices to be filled in the political subdivision, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district.*" (Emphasis added)

§1-3(6) of the Election Code defines a Political subdivision as a "unit of local government". Article VII §1 of the Illinois Constitution defines unit of local government to include counties. Hence, the County of Cook is a

political subidivision [sic] in terms of §10-2. Therefore, the Harold Washington Party must "field a complete list of candidates" for all offices to be filled at the ensuing general election.

§1-3(14) of the Election Code defines "district" as:

> "any area which votes as a unit for the election of any officer, other than the State or a unit of local government or school district, and includes, but is not limited to, legislative, congressional and *judicial districts, judicial circuits, county board districts,* municipal and sanitary district wards, school board districts, and precincts."
> (Emphasis added)

Chapter 34 Ill.Rev.Stat. §2-6001 provides for the election of 15 Cook County Commissioners every four years "by the legal voters of Cook County". . . . §2-6001 states further that ten of said commissioners shall be elected from legal voters of the City of Chicago and five commissioners shall be elected from legal voters of the towns outside the City of Chicago.*

The petition of the Harold Washington Party to form a new political party in the County of Cook has been filed, consisting of two separate components: (i) inside the City of Chicago and (ii) the towns outside the City of Chicago. Both components list candidates to be elected at large by legal voters of the County of Cook *with the*

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* Currently the composition of the Cook County Board of Commissioners is seventeen – ten commissioners being elected within the City of Chicago – seven commissioners from the suburban area outside of Chicago; this pursuant to District Court Order following the decennial census for 1970 and 1980.



*exception of judicial candidates.* The towns outside the City of Chicago component additionally lists candidates to be elected in the towns outside the City of Chicago *with the exception of judicial candidates.*

By filing said petition components listing different candidates for the two different districts the petitioners are estopped from claiming that the City of Chicago and the towns outside the City of Chicago are not separate districts in terms of §10-2. Stated otherwise, §10-2 requires "separate components for each district from which an officer is to be elected." Petitioners have complied with this statutory provision, but have failed to file "a complete list of the names of the candidates of the party for all offices to be filled in the political subdivision at large" and have further failed to have each component " . . . contain the names of those candidates to be elected from the particular district."

Article VI, §1 of the Illinois Constitution provides that the first judicial District consists of Cook County. Article VI, §3 of the Illinois Constitution provides that three Supreme Court judges shall be selected from the First Judicial District. Article VI, §5 of the Illinois Constitution provides that the number of Appellate judges to be selected from each judicial District shall be provided by law. Regarding Circuit Court judges, Article VI, §7 of the Constitution provides that the First Judicial District (Cook County) shall constitute a judicial circuit. The Illinois Act relating to the "circuit courts" state that "(The) County of Cook shall be one judicial circuit." (Ill.Rev.Stat., Ch.37, §72.1) In other words, the Cook County judicial circuit is comprised of the County of

Cook. Hence, Article VI of the Illinois constitution provides that Supreme, Appellate and a segment of the Circuit Court judges shall be elected from the entire County of Cook.

Paragraph 1(a) of the Objectors' petition alleges that the nomination papers are invalid for failure to list Harold Washington Party candidates for the judicial office on page 4 of the objectors' enumerated petition. Attached as Exhibit A is a list of the judicial offices to be elected at large by electors of the political subdivision of Cook County as certified by the Clerk of Cook County. The petition at issue omits these judicial candidates; hence the petition is invalid.

In this regard, the decision of *Anderson v. Schneider,* 67 Ill.2d 165, 365 N.E.2d 900 (1977) stands for the proposition that the requirement that a new political party petition must contain a complete slate did not necessitate removal from the ballot of the names of all candidates when only one candidate out of a full slate was found to be ineligible as a candidate. However, the majority points out "the General Assembly, contrary to the position of both dissents, did not exact that there be a complete list of *eligible* candidates, *but only a complete list of candidates.*" (365 N.E.2d 900 at 905). The nomination papers at issue fail even to meet this Supreme Court standard of a "complete list of candidates".



## II. FAILURE TO FILE A COMPLETE SLATE OF CANDIDATES FOR ALL OFFICES TO BE FILLED IN THE CITY OF CHICAGO DISTRICT AND THE TOWNS OUTSIDE THE CITY OF CHICAGO DISTRICT.

(Paragraphs 1(b) and 1(c) of the Objectors' Petition)

In addition to the failure to list Cook-County-wide judicial offices, the Harold Washington Party nomination papers fail to (a) list judicial offices to be elected from the City only on the City of Chicago district component and (b) further fails to list judicial offices to be elected from the towns outside the City of Chicago district component. These judicial vacancies are listed on attachment A to this memorandum.

The filers of the Harold Washington Party nomination papers failed to meet their clear duty to file a full judicial slate in each of the County of Cook components as based upon the Illinois Constitution's Judicial Article and the legislative history of Ch. 37 Ill.Rev.Stat. which descends therefrom.

Article VI of the Illinois Constitution of 1970, §2 and 7 provides that the Cook County Judicial Circuit shall be divided into three separate units for the purpose of selecting Circuit Court judges, unless otherwise provided by law. These units are comprised of the following districts 1. Cook County (for judges to be elected at large) 2. Chicago and 3. That portion of the County referred to by the statute as the towns outside Chicago.

In this regard, Ch. 37 Ill.Rev.Stat. §72.42 was adopted as amended by P.A. 77-1814 §2 effective. July 1, 1978 and sets forth the number of judges allocated to each of the three units of the Cook County Judicial Circuit.

Specifically, the County of Cook shall have 83 resident judges. Twenty-seven of those resident judges shall be elected from the unit comprised of the territory of the Circuit Court of Cook County outside the corporate limits of Chicago and 56 resident judges shall be elected from the unit within the corporate limits of Chicago. A vacancy in the office of resident judge of the Circuit Court of Cook County shall be filled from the unit in which it occurs." (Ill.Rev.Stat. 1987, Ch. 37, Par. 72.42(4).) Furthermore, "[w]hen a vacancy in the office of resident circuit judge is filled by election, the election shall be for the appropriate county or unit, and not for the entire circuit." Ill.Rev.Stat. 1987, Ch. 37, 72.42-1.

This entire statutory scheme was amended by the Illinois Legislature upon the passage of P.A. 86-786, effective September 6, 1989 to provide for a different and more complex scheme for subdivision of the Cook County Judicial Circuit into individual subcircuits. However, the pertinent provisions of P.A. 86-786 were recently held unconstitutional by the Illinois Supreme Court in *Chicago Bar Association v. State Board of Elections*, No. 69823.

This decision returned the pertinent provisions of Ch. 37 Ill.Rev.Stat. to the *status quo ante* by reinstating the three separate units of the Cook County Circuit and the staffing formula contemplated therefore under Ch. 37, §72.42 sub.par.4.

In summary, the Harold Washington Party nomination papers fail to contain the requisite judicial candidates in the City of Chicago's only district component, and further fails to list the requisite judicial candidates in



the towns outside Chicago district component (see attachment "A"). Since the nomination papers at issue fail to meet this standard of a complete list of candidates in each district component, the Harold Washington Party and all candidates appearing on said nomination papers are not eligible for ballot placement.

The Motion to Strike and Dismiss Objection 1 is without merit. Indeed, the assertion by the HWP that judicial offices are state offices rather than county offices is a red herring and is urged in direct contravention of Section 10-2 of The Election Code which deals specifically with the subject matter of the formation of new political parties. Specifically, The Election Code provides that:

> "In the case of a petition to form a new political party within a political subdivision in which *officers* are to be elected from districts and at large . . . such petition must contain a complete list of the names of the candidates of the party for *all offices* to be filled in the political subdivision at large . . . . " (Emphasis added)

As demonstrated earlier, Cook County is a "political subdivision" and judicial offices are to be filled within Cook County. It is crystal clear, therefore, that some of the offices to be filled at the next election are judicial offices and that the election will be from "districts and at large". Thus, the statute does not exclude judicial offices, but on the contrary, requires that the petition to form a new political party list candidates for "all offices to be filled in the political subdivision at large". In addition, The Election Code (Sec. 1-3[14]) expressly defines district as including not only "county board districts", but also "judicial districts" and "judicial circuits". At best, the argument asserted is disingenuous. The HWP cites only a

portion of the statute and conveniently omitted the critical portion. The statute provides as follows:

> "Any group of persons hereafter desiring to form a new political party throughout the State, or in any congressional, legislative or judicial district, *or in any other district or in any political subdivision (other than a municipality) not entirely within a single county,* shall file with the State Board of Elections a petition, as hereinafter provided; and *any such group of persons hereafter desiring to form a new political party within any county shall file such petition with the county clerk, . . . "* (Emphasis added)

The underscored portions of the statute demonstrate that any person desiring to form a new political party within any county, such as exists in this case, must file that petition with the County Clerk. Even if one construes the statute as indicating that judicial candidates must file with the State and not with the County, the fact remains that judicial candidates must still be included in order to comply with the statute's requirement to field a complete list of candidates.

In short, the requirements to establish a new political party are set forth in Article 10 of The Election Code and specifically in Section 10-2. No other provision of The Election Code deals with that subject matter. Accordingly, petitions to form new political parties must meet each and every requirement of Section 10-2. That section clearly provides that candidates of the new party for "all offices to be filled" must be contained in the petition. The petitioners' own actions further demonstrate the requirement that the names of candidates for "all offices" be set forth in their petition in that they filed a separate petition



and slate of candidates for the Chicago Metropolitan Water Reclamation District. Thus, the petitioners have admitted that candidates for all offices must be named.

III R. EUGENE PINCHAM WAS DEFEATED FOR NOMINATION AS A DEMOCRATIC CANDIDATE FOR THE OFFICE OF PRESIDENT OF THE COOK COUNTY BOARD AT THE MARCH 20, 1990 PRIMARY ELECTION, AND IS THEREFORE INELIGIBLE TO BE A CANDIDATE OF THE HAROLD WASHINGTON PARTY.

(Paragraph 4 of the Objectors' Petition.)

Pursuant to the pertinent provisions of §10-2 of the Election Code:

> "A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election, is ineligible for nomination as *a* candidate of a new political party for election in that general election." (Emphasis added)

One of the listed candidates for Member of the Board of County Commissioners of Cook County on the HWP nomination papers, R. Eugene Pincham, was a Democratic Party candidate on the March 20, 1990 Party Primary ballot running for the office of President of the County Board of Commissioners as well as County Commissioner from inside the City of Chicago. Mr. Pincham was defeated in his candidacy for President of the County Board of Commissioners and another Democratic Party candidate was proclaimed as the successful Democratic Party nominee by the Cook County Canvassing Board.

In view of the aforesasid [sic] provisions of §10-2, Mr. Pincham is "ineligible" and not qualified to run as a new political party candidate for election at the November 6, 1990 General Election.

However, on August 6, 1990, R. Eugene Pincham, as required by §10-5 of the Election Code, filed a sworn statement of candidacy averring that he was "qualified" to run for office as a candidate of the Harold Washington Party. Objectors submit that Mr. Pincham, however, is not legally qualified as a Harold Washington Party new political party candidate and, therefore, his statement of candidacy is false and invalid and his nomination papers must be stricken.

It is the function of this Board to determine and follow the intent of legislative acts. *Lipsey v. Michael Reese Hospital*, 46 Ill.2d 32, 262 N.E.2d 450 (1907) In ascertaining the legislature's intention, the entire statute must be considered, as well as the evil to be remedied and the object to be attained. *People v. Bratcher*, 63 Ill.2d 534, 349 N.E.2d 31 (1976) The consequences resulting from various constructions of an act must also be taken into consideration. *People ex. rel. Holland v. Edelman*, 27 Ill.App.3d 793, 327 N.E.2d 338 (1975) It is to be presumed that the legislature in passing legislation did not intend absurdity, inconvenience or injustice. *Illinois Crime Investigation Commission v. Buccieri*, 36 Ill.2d 556, 224 N.E.2d 236, *cert. denied*, 389 U.S. 848, 88 S.Ct. 75, 19 L.Ed.2d 117 (1967) Therefore, where several constructions may be placed upon a statute, this Board should select that which leads to a logical result and avoid those which would be absurd. *Board of Education v. Community High School District No. 211*, 89 Ill.App.2d 481, 232 N.E.2d 316 (1967)



*However, where the language of a statute is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the statute must be accepted on its face. Totten v. State Board of Elections*, 79 Ill.2d 288, 403 N.E.2d 225, 227 (1980); *Jay v. Boyd*, 351 U.S. 345 (1956); *Mason v. Cutkomp*, 15 Ill.App.2d 378, 146 N.E.2d 382 (1957); *Salmans v. Dutz*, 16 Ill.App.2d 356, 148 N.E.2d 17 (1958). Sutherland, Statutory Construction, Chapter 46. (Emphasis added)

"On its face", according to §10-2 of the Election Code, R. Eugene Pincham, "A candidate for whom a nomination paper has been filed as a partisan candidate at a primary election, and who is defeated for his or her nomination at the primary election is ineligible for nomination as a candidate of a new political party for election in that general election. . . . "

And whether Mr. Pincham was successful as a Democratic nominee for the office of Member of the Board of County Commissioners of Cook County is indeed irrelevant. Since the statute is clear and unambiguous, it must be interpreted in accordance with the language of the statute. See e.g. 34 ILP Statutes, §116. To do so, renders Mr. Pincham ineligible as a candidate for nomination of the Harold Washington Party and further renders his statement of candidacy invalid, since his conduct is in direct violation of the Election Code. The only possible remedy for such violation is the removal of R. Eugene Pincham's name from the November 6, 1990 ballot.

## IV. THE HWP PETITION SHOULD BE STRICKEN BECAUSE IT CONTAINS NO MORE THAN 7,560 SUBURBAN SIGNATURES WHERE THE ELECTION CODE REQUIRES A MINIMUM OF 25,000 SIGNATURES

The County of Cook consists of two separate districts. Namely (1) the area located inside the City of Chicago, and 2) the area located outside of the City of Chicago. Each are constitutes a district as defined in Section 1-3(14) of the Election Code which defines districts as:

> any area which votes as a unit for the election of any officer, other than the State or a unit of local government or school district, and includes, but is not limited to, legislative, congressional and judicial districts, judicial circuits, county board districts, municipal and sanitary district wards, school board districts, and precincts."

Section 10-2 of the Election Code provides in relevant part:

> "In the case of a petition to form a new political party within a political subdivision in which offices are to be elected from districts and at-large, such petition shall consist of separate components for each district from which an officer is to be elected. Each component shall be circulated only within a district of a political subdivision and signed only by qualified electors who are residents of such district. . . . *Each component of the petition from each district from which an officer is to be elected must be signed by qualified voters of the district equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district*



> *at which an officer was elected to serve the district."* (Emphasis added.)

Section 10-2 also provides that:

> [W]henever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number or signatures for State-wide new political party petitions at the next preceding State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition."

Section 10-2 provides that a petition to form a new political party State-wide "shall be signed by 1% of the number of voters who voted at the last preceding State-wide general election or 25,000 qualified voters whichever is less."

Thus, Section 10-2 of the Election Code requires persons wishing to form a new political party within the County of Cook to file nomination petitions containing 25,000 signatures of qualified voters residing within the City of Chicago as well as 25,000 signatures of qualified voters residing outside the City of Chicago.

Because the HWP obtained no more than 7,560 suburban signatures the HWP clearly failed to obtain the necessary 25,000 suburban signatures required under Section 10-2 of the Election Code. The HWP nomination papers should, therefore, be stricken.

The HWP, however contends that a new political party in Illinois need only obtain the signatures of 25,000 qualified voters in order to gain access to the ballot, citing *Illinois State Board of Elections v. Socialist Workers'*

*Party*, 440 U.S. 173, 99 S.Ct. 983 (1979) as authority for this proposition. However, HWP's reliance upon this case is misplaced because the U.S. Supreme Court in that case simply held that the State of Illinois could not impose a more stringent signature requirement upon new political parties and independent candidates seeking office within the City of Chicago than it did for independent candidates and new political parties seeking State-wide office without some reason for the more stringent requirement. The Court held:

> The signature requirements for independent candidates and new political parties seeking offices in Chicago are plainly not the least restrictive means of protecting the State's objectives. The Illinois Legislature has determined that its interest in avoiding overloaded ballots in statewide elections is served by the 25,000-signature requirement. Yet appellant has advanced no reason, much less a compelling one, why the State needs a more stringent requirement for Chicago.
>
> * * *
>
> We therefore hold that the Illinois Election Code is unconstitutional insofar as it requires independent candidates and new political parties to obtain more than 25,000 signatures in Chicago. (99 S.Ct. 983, 991)

Following the Supreme Court's decision in the *Socialist Workers' Party* case, the Illinois General Assembly amended Section 10-2 of the Election Code. See Public Act 81-926, effective September 22, 1979. The legislature added the following sentence to paragraph four of Section 10-2:



> "However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide general election, such State-wide petition signature requirement shall be the minimum for such district or political subdivision new political party petition."

The Legislative Debates demonstrate that the legislature added this sentence to paragraph four of Section 10-2 in order to bring Section 10-2 of the Election Code into conformity with the Supreme Court decision in the *Socialist Workers' Party* case. See, Comment of Senator Rhodes on June 25, 1979, Senate Debates 91st General Assembly, Day 72, pages 194 to 195.

The General Assembly, however, did not amend that portion of Section 10-2 which requires each component of a petition to be signed by not less than 5% of the qualified voters who voted in the preceding regular election in such district or 25,000 signatures, whichever is less. Requiring such a minimal number of signatures serves the State's interests in preserving the integrity of Illinois electoral process and regulating the number of candidates on the ballot. The U.S. Supreme Court has found both these interests compelling. See *American Party of Texas v. White*, 415 U.S. 767, 782 no. 14, 94 S.Ct. 1296, 1307 (1974).

The HWP contends that the State may not impose a signature requirement in excess of 25,000 qualified voters. The 7th Circuit, however, has rejected this argument on at least two occasions. See *Bowe v. Board of Election Commissioners v. City of Chicago*, 614 F.2d 1147 (7th Cir. 1980) and

*Gjersten v. Board of Election Commissioners of City of Chicago*, 791 F.2d 472 (7th Cir. 1986). In fact the Seventh Circuit stated in *Bowe:*

> "The plaintiffs apparently take the position that the *Socialist Workers' Party* case stands for the broad proposition that a state may never impose a higher signature requirement for an office of a smaller subdivision than the requirement imposed for any office of a larger subdivison [sic]. We cannot agree." (614 F.2d 1147, 1151)

In *Bowe* and *Gjersten* the Seventh Circuit has consistently rejected such a "litmus paper test approach", *Bowe, supra* at 1152 and *Gjersten, supra* at 477.

The *Bowe* case, supra, is also instructive for another reason. The requirement that a County-wide "new political party" meet a 5% signature requirement in both the (i) "inside Chicago" and (ii) "suburban only" districts, is a proper legislative one, to wit: to assure that the new political party can show "a significant modicum of support before a new political party may appear on the ballot." (614 F.2d at 1151)

> Thus substantial minimum signature requirements serve compelling State interests, and the only question is whether the specific percentage chosen serves the State's compelling interests in a reasonable manner." (614 F.2d at 1151)

The 5% – 25,000 "suburbs only" district signature requirement is directed to that end and, respectfully, this Electoral Board, as seen, does not even have authority to consider the statutory signature requirement's reasonableness and constitutionality. For this reason, the



Board must apply the statutory 25,000 suburban signature requirement exactly as written.

(Parenthetically, it should be noted that it is already known that the HWP has city of Chicago substantial support, for it made the ballot there and became an established political party in that city. Ergo, the only County-wide new party question herein is whether the HWP has the requisite substantial suburban support.)

Section 10-2's 25,000 signature requirement requires a new political party running county-wide to demonstrate at least minimal support in both the City of Chicago and suburban Cook County. As noted previously, this requirement is not only reasonable but also serves compelling State interest. Thus, the 25,000 signature requirement for both the City of Chicago and suburban Cook clearly comports with the *Social Workers' Party* case and its progeny, and should be followed. Because the HWP failed to obtain the requisite number of suburban signatures, the petition should be stricken.

Even if the HWP were *arguendo* allowed to improperly contend that they need only 25,000 total signatures, the petitions would still be invalid. Since the legislature has manifested a clear legislative intent that the "outside Chicago" district component must have 5% support, and since it is elementary that the Courts must give effect to the intent of the legislature, the Board herein would still have to allocate the 25,000 requirement by the percentage of the total vote in the City of Chicago and the "suburbs only" to the total county vote at the last relevant election.

For example, in 1988, if the city had 55% of the total county vote, and the suburbs only 45%, then the 7,560

signatures that were filed for the suburbs is still too short. (25,000 x 45% = 12,250 required minimum signatures.)

V. THE HAROLD WASHINGTON PARTY IS AN ESTABLISHED POLITICAL PARTY IN THE CITY OF CHICAGO AND THEREFORE THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY VIOLATES THE SECTION 10-5 PROHIBITION AGAINST A NEW POLITICAL PARTY BEARING "THE SAME NAME" OF AN ESTABLISHED POLITICAL PARTY. THE HWP NAME SHOULD BE REMOVED FROM THE BALLOT.

(Paragraph 3 of Objectors' Petition.)

The Harold Washington Party ran a candidate for mayor of the City of Chicago, the only partisan office up for election, at the April 4, 1989 Special Mayoral Election. At this Election, the Harold Washington Party received well over 5% of the total votes cast for mayoral office. In fact, the Harold Washington Party candidate Timothy Evans received 41.11% of the total votes cast for Mayor; hence the HWP became an "established political party", pursuant to, and as defined by Article 10 – §10-1 and §10-2 – of the Illinois Election Code. (See Attachment B; a certification from the Chicago Board of Elections.)

These nomination papers directly violate the express mandate of Article 10-5 of the Election Code which states that a new political party petition for nomination:

> "(S)hall not bear the same name as, nor include the name of, *any* established political party as defined in this article." (Emphasis added)



The nomination papers at issue bear the name of an already "established political party," the "Harold Washington Party" and, as such, violate the §10-5 prohibition against a new political party bearing "the same name" of an established political party.

The Third Division of the First District Appellate Court has dealt with §10-5(2) of the Illinois Election Code. In *Doty v. Representation For Every Person (REP) Party*, (1981) 97 Ill.App.3d 316, 52 Ill.Dec. 947, 422 N.E.2d 1156, this Court looked to section 10-2 and 10-5 of the Illinois Election Code in finding the abbreviation "REP" included the name of an established political party (i.e., the Republican Party).

The Court went on to decide the *Doty* case solely as a matter of statutory construction citing §1002 of Chapter 1, Ill.Rev.Stat. 1979, and *Franzese v. Trinko* (1977), 66 Ill.2d 136, 5 Ill.Dec. 262, 361 N.E.2d 585.

> "Applying these principles to the instant case we believe that the plain and ordinary meaning of the language of the statute which prohibits use of a party name that includes the name of an established party, prohibits as well including such name in any abbreviated form."
>
> . . .
>
> Petitioner argues that it is the purpose of §10-5(2) to restrict a new political party from using the name of an established political party in order to avoid the perpetration of a fraud upon the electorate. We agree." *Doty*, 422 N.E.2d 1156, 1157

Additionally, See *Vasquez v. Municipal Officers Electoral Board*, 115 Ill.App.3d 1014, 450 N.E.2d 1379 (3rd Dist. 1983). In *Vasquez*, the candidates' nomination petitions

requested that they be designated as the "Action IV Party," a new political party with respect to an election to be held on April 12, 1983 in the village of Steger, Illinois. The "Action Party" had run candidates for election in the village for many years, under the labels of "Action Party," "Action Party II," and "Action Party III." "Action Party III" had slated candidates in the 1981 election and received more than 5% of the vote cast for the village officers such as to render it an established political party within the purview of section 10-2 of the Illinois Election Code. Ill.Rev.Stat. 1983, Ch. 46, Par. 10-2.

The *Vasquez* court first determined that "Action IV" was the same party which was designated as "Action III" and in prior years under the "Action" label and that it did not become a new political party merely by adding a Roman numeral at the end of the party name. Accordingly, the court found that the candidates failed to qualify and had wrongfully sought nomination under §10-2 as a new political party.

Additionally, in *Ballentine v. Bardwell*, 478 N.E.2d 500, 132 Ill.App.3d 1033 (First Dist. 1985) the court stated:

> "It is undisputed that the name "New United Idea Party" included the name of an established political party, the "United Idea Party," which fielded a slate of candidates at the municipal election held in Robbins, Illinois, on April 12, 1983, such as to constitute an established political party under the Code." Ill.Rev.Stat. 1983, Ch. 46, Par. 10-2).

The *Ballentine* Court ruled the "New United Idea Party" designation off the ballot, but allowed the *candidates* thereof to appear on the ballot, individually, without



party designation. Accordingly, this Honorable Board should order that the Harold Washington Party designation should be stricken from the ballot.

The motion of the HWP to dismiss this objection is specious. First, it has admitted, in Paragraph 7 of the Affidavit of David Reed, Sr., "That no provision of the Election Code provides for the expansion of an established City-wide political party to run slates County-wide." That is a startling admission, since it establishes conclusively that there is no statutory authority for the established HWP to simply expand and run slates of candidates County-wide. Further, it has acknowledged that a new political party shall not bear the same name as, nor include the name of any established political party.

In their motion to strike and dismiss Objection #3 of Objectors' Petition, the HWP candidates maintain that the prohibition against a new political party using an established political party's name "does not preclude any established political party from making nominations in those cases in which it is authorized to do so." The HWP candidates then argue further that the "established Harold Washington Party expressly authorized the use of the same name for the new political party . . . "

The HWP candidates however, overlook the prohibition in Section 10-2 of the Election Code which provides that once a party has become an established political party by receiving more than 5% of the votes at an election within a political subdivision, *such party's candidates shall thereafter be nominated "under the provisions of the laws regulating the nomination of candidates of established*

*political parties at primary election and political party conventions . . . " i.e., by primary procedures or caucus procedures described in Section 7-1 of the Election Code.* Furthermore, Section 10-1 of the Election Code provides that candidates for election by established parties may not be nominated under the provisions of Article 10 of the Election Code, its provision for nomination applying only to new parties.

Hence, the established Harold Washington Party is precluded by virtue of Sections 10-1 and 10-2 from authorizing any nominations of the candidates of its party pursuant to the new political party provisions of Article 10. *Accord.* See *Vasquez v. Municipal Officers Electoral Board*, 115 Ill.App.3d 1014 (3rd Dist. 1983).

Further, on its face, the very petition which is filed is one "to form a *new* political party" in Cook County [emphasis added]. It can hardly contend, therefore, that it should not be held accountable to meet all of the statutory requirements for the establishment of a "new" political party including the protection against using an established political party's name.

VI. SINCE OBJECTORS' 15% SAMPLING OF THE PETITION SHEETS ESTABLISHED THAT OVER 50% OF THE SIGNATURES ARE INVALID, THEN THIS ELECTORAL BOARD SHOULD ALSO INVALIDATE SIGNATURES NOT SPECIFICALLY OBJECTED TO.
(Paragraph 6 of the Objectors' Petition)

The court decisions of: *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.2d 354, 523 N.E.2d 1299 (First.Dist. 1988); *Fortas v. Dixon*, 122 Ill.App.3d 697, 462



N.E.2d 615 (First.Dist. 1984) and *Huskey v. Municipal Officers Electoral Board*, 156 Ill.App.3d 201, 509 N.E.2d 555 (First Dist. 1987) stand for the proposition that when the sheets of a nominating petition submitted by purported and actual circulators evidence a patter of fraud, false swearing and total disregard for the mandatory requirements of the Election Code, the sheets purportedly circulated by that individual should be stricken in their entirety.

The Objectors have submitted evidence of false swearing by Exhibit "A" attached to Objectors' petition. In this regard, §10-4 of the Illinois Election Code sets forth the requirements of a new political party petition which must be complied as a prerequisite to being placed on the ballot. (Ill.Rev.Stat. 1989, Ch. 46, par. 10-4) A petition includes sheets containing signatures of qualified primary electors "in their own proper persons only." (Par. 10-4) The circulator must sign a statement under oath at the bottom of each petition sheet, certifying that the signatures on the sheet were signed in her present and are genuine. (Part. 10-4) The requirements of section 10-4 are mandatory. (*Schumann v. Kumarich* (1981), 102 Ill.App.3d 454, 58 Ill.Dec. 157, 430 N.E.2d 99; see also *Bowe v. Chicago Electoral Board* (1980, 79 Ill.2d 469, 38 Ill. Dec. 756, 404 N.E.2d 180 (finding paragraph 7-10, a section with a similar circulator's affidavit requirement, to be mandatory). These provisions of §10-4 are clearly violated here, where circulators permitted individuals to sign the Harold Washington Party nominating petition, even though they are not eligible signatories.

§10-4 of the Illinois Election Code further provides that the result of non-compliance with the petition

requirements is that, "No signature shall be valid or be counted in considering the validity of sufficiency of such petition unless the requirements of this Section are complied with". (Ill. Rev. Stat. 1985, Ch. 46, par. 10-4)

The Harold Washington Party candidates moved to strike the objections of Paragraph 5 and Paragraph 6, Pages 5 through 14 on the ground that the Appendix Recapitulation sheets "are manifestly and obviously prima facie flagrantly fraudulent".

However, the movants fail to cite even one court decision authorizing an electoral board to strike objections on the grounds advanced in said motion. Under Section 10-9(2) of the Election Code, this Honorable Board is required to "hear and pass upon objections to the nomination of candidates. . . . " Objectors respectfully submit that an electoral board ruling upon a motion that the objections are "prima facie flagrantly fraudulent" lacks statutory authority to dismiss such objections relating to the validity of signatures on a petition without performing objector's requested *binder check*. Objectors have filed a Verified Petition which prima facie states sufficient grounds to remove all candidates from the ballot for failure to file the requisite number of valid signatures. In this regard, pursuant to the adopted rules of this Honorable Board, specifically paragraph 6:

> " . . . nomination papers and objections shall be compared with those permanent registration records by either the Office of the County Clerk or the Chicago Board of Election Commissioners.
>
> . . . "



The allegations of the Appendix Recapitulation Sheets require that a binder check ensue to determine the validity of the signatures and likewise, to determine the validity of the objections.

The HWP motion also ignores the "pattern of fraud" section of the objection (see also, Argument VI. of this Memorandum). As stated therein, the objectors' specific sampling of 15% of the petition sheets established that over 50% of the petition signers on those petition sheets were not registered voters. Accordingly, the objectors have requested that this Board invalidate entire sheets and not just individual signatures because of the clear evidence of fraud permeating the petition circulator's process. Consistent with this, and to preserve this objection; the objectors have requested that the genuineness of all the signatures on the nominating petitions must be subjected to a binder check.

The myriad and specific objections to the validity of the signatures on the petitions as set forth in detail in Exhibit "A" filed simultaneously with the objections establishes that 15% of the total signatures were examined by the objectors and that 53% of that amount were invalid for various reasons. Based upon the pattern of fraud, false swearing and total disregard of the Illinois Election Code established in Exhibit "A", the objectors submitted their Appendix Recapitulation in which they assert, as they are entitled to under the law, that all of the signatures are invalid. Thus, the Appendix Recapitulation, rather than reflecting indiscriminate challenges, reflects, based upon the inordinate number of invalid signatures set forth in Exhibit "A", that all signatures

should be scrutinized by this Board through a binder check.

To summarize this argument, the movants improperly seek to inject a new standard for dismissing signature objections – a standard which has no basis in law. The validity of the signature objections in the Appendix Recapitulation sheets can only be determined by a binder check and reference to the official lists of registered voters. But the validity of such objections cannot be predetermined and dismissed upon the movants' mere conclusory epithets of "despicably reprehensible and intolerable attempted fraud." Moreover, by virtue of Exhibit "A" attached to the objections and incorporated therein, the objectors have challenged the genuineness of all signatures on the nominating petition. Their motion to strike objections should, therefore, be denied.

Hence, objectors request, in light of the above cited authority that this Honorable Board invalidate entire sheets and not just individual signatures because of clear evidence of fraud permeating the petition circulator's process.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Honorable Board declare that the nomination papers of the Harold Washington Party and the nominations of all candidates appearing thereon be declared insufficient, null and void; not in compliance with the laws of the State of Illinois and lack the statutory minimum number of valid signatures for ballot placement and hence, are invalid, and that this Honorable Board enter its



decision that the Harold Washington Party and the names of all candidates appearing on said nomination papers not be printed on the official ballot for the General Election to be held on November 6, 1990.

Respectfully submitted,

Dorothy Reed, Valerie A. sutton,
Patton L. Feichter, Ervin S.
Ricks and David Barrera

By /s/ George N. Leighton
George N. Leighton,
Their Attorney

* * *

[Exhibits omitted in printing]

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY AND TO ALL CANDIDATES OF THE HAROLD WASHINGTON PARTY APPEARING ON SAID NOMINATION PAPERS

---

OBJECTIONS TO THE NOMINATION PAPERS OF THE HAROLD WASHINGTON PARTY, A NEW POLITICAL PARTY, AND TO EACH OF THE FOLLOWING CANDIDATES OF THE HAROLD WASHINGTON PARTY:

COUNTY-WIDE
BARBARA J. NORMAN
JANICE H. ROBINSON
DONALD PAMON
HELDIA R. RICHARDSON
TOMMY BREWER
CHARLES W. ALEXANDER
DOROTHY C. HOGAN
WILL LAWRENCE
KENNETH G. HOPKINS

INSIDE THE CITY OF CHICAGO
R. EUGENE PINCHAM
ROBERT E. PINCHAM, JR.
BARBARA J. NORMAN
PERCY V. COLEMAN
VIVIAN D. STEWART-TYLER
JAMES A. DEANES
DINO F. McNEAL
MARY KING CRISS
DAVID T. PERSONS
HELEN E. JONES



OUTSIDE THE CITY OF CHICAGO
ROBERT E. BROOKS, JR.
MELLO SAM H. CLORA
JUDY MARIE HAWTHORNE
CHESTER LeSURE
CELIA DUNCAN
DON C. PASSMORE, JR.
BOBBIE J. SMITH

---

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF OBJECTIONS #2 AND #3 OF THE VERIFIED OBJECTORS' PETITION AND IN OPPOSITION TO THE MOTIONS TO STRIKE THESE OBJECTIONS

Now come the Objectors, by and through their attorney George Leighton, and hereby supplement their previous memorandum and state as follows:

I.

In paragraph 2 of the Objectors' petition, it is alleged that the outside-the-city component of the HWP nomination papers contain on their face no more than 7,560 purported valid signatures of electors residing in this district. The HWP proponents have not disputed this fact. The Objectors further allege that the pertinent provisions of §10-2 would require the necessary minimum of 25,000 signatures of electors in this area.

The Respondents allege, citing the *Socialist Workers' Party* decision as authority, that to require 25,000 for the outside-the-city component of the petition and an additional 25,000 signatures for the inside-the-city component would be unconstitutional since only 25,000 signatures are required for State-wide candidacy.

In Argument VI of the Objectors' memorandum, the Objectors maintain that the HWP's reliance on the *Socialist Workers' Party* decision is misplaced, and that the State of Illinois can constitutionally impose a more stringent signature requirement upon new political parties seeking ballot access for officers elected by electors county-wide and from districts within a County than the signature requirements for State-wide officers.

The Objectors do not waive this argument. However, additionally it need be noted that §10-2 requires that each component of the petition for *each* district from which an officer is to be elected must be signed by qualified voters equaling not less than 5% of the number of voters who voted at the next preceding regular election at which an officer was elected to serve the district.

In this regard, 1986 was the last election at which officers were elected to serve the Cook County Board districts of inside the city of Chicago and the towns outside the city of Chicago. Attached hereto are the official final results from the County of Cook, which reflects that 1,476,370 voters cast ballots county-wide, that 841,085 ballots were cast in the city and that 635,285 ballots were cast in the district outside the city. Based on these figures, the city and the outside the city vote percentages are 57% and 43%, respectively.

In the *Socialist Workers' Party* case, the District Court enjoined enforcement of the 5% provision insofar as it mandated more than 25,000 signatures. This order was affirmed by the Court of Appeals and the Supreme Court of the United States.



Assuming, in arguendo, that the State could not constitutionally require more than 25,000 signatures county-wide, then applying the 43% factor to a 25,000 maximum, the HWP would still require a minimum of 10,750 signatures (or 43% of the 25,000). This approach would comport with the *Socialist Workers' Party* decision.

Therefore, Objectors request that this Honorable Board not only find that the outside-the-city component lacks the requisite 25,000 signatures and is therefore invalid, but to further find that even if 25,000 signatures were the maximum signatures required county-wide, that the outside-the-city component of the petition on its face would still contain insufficient valid signatures for ballot placement.

II.

An additional point to be addressed herein is the effect of invalidating the outside-the-city component of the petition on the validity of the HWP nomination papers as a whole. The Objectors submit that the invalidation of the outside-the-city component of the petition would dictate that the nomination papers be deemed invalid in their entirety.

In this regard, the decision of *Anderson v. Schneider*, 67 Ill.2d 165, 365 N.E.2d 900 (1977), stands for the proposition that the §10-2 requirement that a new political party petition must contain a "complete list of candidates" did not necessitate the removal of the names of all candidates on the petition from the ballot when only one listed candidate is ineligible. However, the *Anderson* decision would not provide support for striking only the

outside-the-city "component," but rather the entire petition must fall. Stated otherwise, the "complete list of candidates" statutory construction involved in *Anderson* does not and cannot provide authority for striking only the outside-the-city "component."

First of all, in distinction to *Anderson*, the issue herein does not concern *ineligibility* of any candidate to run but rather a completely different statutory provision; namely, insufficient signatures on a statutorily required "district" "component" of the petition. In *Anderson*, in fact, there were more than sufficient signatures for ballot placement. Indeed, the entire focus of the *Anderson* decision was sufficient valid signatures coupled with the ineligibility of merely one of the many candidates listed. Secondly, the *Anderson* petition did not consist of two statutorily mandated *separate* district components as here, but rather only one uniform nominating petition.

Moreover, §10-2 requires that when a new political party is fielding candidates from both at-large and from districts; "The entire petition, *including all components*, must be signed by . . . " (Emphasis Added) the requisite 5% of the voters in each district. In pertinent part, Article 10 of the Election Code provides:

> "In the case of a petition to form a new political party within a political subdivision in which officers are to be elected from districts and at-large, such petition shall consist of *separate components for each district from which an officer is to elected*. *Each component* shall be circulated only within a district of the political subdivision and signed only by qualified electors who are residents of such district. Each sheet of such petition must contain a complete list of the names of



> the candidates of the party for all offices to be filled in the political subdivision at-large, but the sheets comprising each component shall also contain the names of those candidates to be elected from the particular district. *Each component of the petition for each district* from which an officer is to be elected must be signed by qualified voters of the district equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district. The entire petition, including all component, must be signed by a total of qualified voters of the entire political subdivision equaling in number not less than 5% of the number of voters who voted at the next preceding general election in such political subdivision at which an officer was elected to serve the political subdivision at-large.
>
> *The filing of such petition shall constitute the political group a new political party, for the purpose only of placing upon the ballot at the next ensuing election such list . . . of party candidates . . . "*
> (Emphasis Added)

Therefore, if "such petition" contains the requisite 5% signatures for "*each* component of the petition for *each* district," the statute provides that the new political party shall be placed on the ballot in the county. If, however, "such petition" does *not*, as here, contain the requisite 5% signatures for "each" "district" "component," then §10-2 calls for the new political party and all its candidates *not* being placed "upon the ballot." An Electoral Board would not have the authority to legislate or rewrite the statute to achieve the improper, peculiar and unprecedented result of allowing the HWP to run as a county-wide party in the City of Chicago only.

Since the outside-the-city district component is invalid on its face, the entire petition is invalid according to the above-cited provisions of §10-2.

III.

An additional point to be addressed is the sanction to apply to new political party candidates when they violate the Article 10 prohibition against using the same name of an established political party. As cited in Section V of the Objectors' Memorandum, the decisions of *Doty v. Representation For Every Person (REP) Party*, 97 Ill.App.3d 316, 52 Ill.Dec. 947, 422 N.E.2d 1156 (1981); *Vasquez v. Municipal Officers Electoral Board*, 115 Ill.App.3d 1014, 450 N.E.2d 1379 (3rd Dist. 1983) and *Ballentine v. Bardwell*, 478 N.E.2d 500, 132 Ill.App.3d 1033 (First Dist. 1985) – all allowed the candidates to appear on the ballot without party designation.

However, in the three above-cited cases, the times for filing new political party petitions and independent petitions were the same. But, in the instant case, the time for filing independent candidate petitions was December 11-18, 1989 (See Chap. 46, §7-12 and §10-3). Since the petitions in this case were not filed until long after the date for filing of independent candidate petitions, the candidates cannot, as a matter of law, be on the ballot under any label. Cf. *Stevenson v. State Board of Elections*, 638 F.Supp. 547 (N.D.Ill 1986) aff'd 794 F.2d 1176 (7th Cir. 1986)

Therefore, Objectors submit that, as in the instant objection, when the filing period for independent candidates precedes the filing period for new political party



candidates and the new political party uses the same name as an established political party, then the proper sanction would be to remove from the ballot all candidates appearing on said petition.

/s/ George N. Leighton
George N. Leighton,
Attorney for the Objectors

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STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

---

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA,

Petitioners,

-vs-

STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES Constituting the COOK COUNTY OFFICERS ELECTORAL BOARD; and BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., BARBARA J. NORMAN, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANES, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, ROBERT E. BROOKS, JR., MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR. and BOBBIE J. SMITH,

Respondents.

No. 90 CO 00238

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## PETITION FOR JUDICIAL REVIEW OF ELECTORAL BOARD DECISION 90 COEB-2

---

NOW COME the petitioners DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA, by and through their attorney George N. Leighton, and petition this Honorable Court, pursuant to Ill. Rev. Stat. Chapter 46, §10-10.1, for judicial review of the August 29, 1990 decision of the Cook County Officers Electoral Board ("Electoral Board") overruling the objections of Petitioners to the nomination papers of the Harold Washington Party ("Nomination Papers") and its candidates for: County-wide office; and Members of the Board of Cook County Commissioners inside the City of Chicago only. In support of this petition, Petitioners state as follows:

1. On August 6, 1990, the Harold Washington Party, and the candidates thereof, filed a petition to form a "new political party in the County of Cook" with the Clerk of Cook County. This petition consisted of two separate components:

   a. The first component listed nine (9) candidates for County-wide office and the ten (10) candidates for the office of Member of the Board of Cook County Commissioners inside the City of Chicago only.

   b. The second component listed nine (9) candidates for County-wide office and the seven (7) candidates for the office of Member of the Board of Cook County Commissioners outside the City of Chicago only.

2. On August 13, 1990, Petitioners filed their Verified Objectors' Petition to the aforesaid Nomination Papers with the Clerk of Cook County.

3. Respondents STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES are members of and constitute the COOK COUNTY OFFICERS ELECTORAL BOARD.

4. Respondents BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., BARBARA J. NORMAN, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANES, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, ROBERT E. BROOKS, JR., MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR. and BOBBIE J. SMITH, are candidates appearing on the Harold Washington Party Nomination Papers.

5. The Objectors' Petition alleged that the Nomination Papers are invalid for the following reasons:

   a. Failure to comply with the pertinent provisions of §10-2 of the Election Code, namely that the Nomination Papers did not contain a complete list of candidates for all offices to be filled in: (1) the political subdivision at-large (County of Cook); (2) the inside-the-City-of-Chicago district and (3) the Outside-the-City-of-Chicago district.

      Specifically, the Nomination Papers fail to list any of the candidates for the judicial offices scheduled to be filled County-wide from the County of Cook, inside the City of Chicago and outside the City of Chicago, at the November 6, 1990 general election. These offices are identified on pages 4-5 of the Verified Objectors' Petition.



   b. Failure to comply with the pertinent provision of §10-2 of the Election Code relating to the minimum number of signatures required on each district component of the Nomination Papers.

      Specifically, in paragraph 2 of the Objectors' petition, it is alleged that "the 'outside the city of Chicago' district of the nomination papers contain on their face a total of no more than 7,560 purported valid signatures of electors residing in the portion of Cook County outside the city of Chicago . . . " when the statute requires a minimum of 25,000 valid signatures of such electors. Therefore, the Nomination Papers are void and invalid in their *entirety*.

   c. The Nomination Papers purport to create a "new political party" in the County of Cook, with the name "Harold Washington Party." By so doing, these Nomination Papers violate the prohibition in §10-5(2) of the Election Code against "new political party" nomination papers bearing the same name as any established political party as defined in Article 10. The Objectors maintained that since the Nomination Papers bear the name of an "established political party" – the Harold Washington Party – they are invalid.

   d. The Objectors' Petition further alleged in paragraph 4 that R. Eugene Pincham, a Harold Washington Party candidate for the office of Member of the Board of County Commissioners of Cook County to be elected from the City of Chicago, was ineligible as a Harold Washington Party candidate since he was defeated in his March 20, 1990 candidacy to be the Democratic Party nominee for President of the Board of County Commissioners of Cook County. Consequently, the pertinent provisions of §10-2 of the Election Code would bar such candidacy, and Mr. Pincham, therefore, filed a false statement of

candidacy averring that he was qualified to run as a candidate of the Harold Washington Party.

e. Paragraphs 5 & 6 of the Objectors' Petition made allegations as to specific signature objections and requested that a binder check be conducted.

6. On August 29, 1990, the Electoral Board issued its rulings; a copy of this decision is attached hereto as Exhibit A.

7. The Electoral Board granted the motion of the Harold Washington Party to strike the objections dealing with the "failure to file a full slate" (par. 1 of the Objectors' Petition), finding that there was no obligation to include judicial candidates on the Nomination Papers to form a new political party in the County of Cook.

One member of the Electoral Board dissented, stating "that failure to include judicial candidates violated the complete slate requirement. Thus, I would find these Nomination Papers invalid as well."

The majority of the Electoral Board erred in not invalidating the Nomination Papers for failure to include a slate of judicial candidates for all offices to be filled in the Cook County political subdivision and for further failure to field the requisite judicial candidates in each of the two districts within the County of Cook, as required by §10-2 of the Election Code.

8. Regarding the failure of the suburban component of the petition to contain on its face the requisite 5% or 25,000 signatures (paragraph 2 of the Objectors' Petition), the electoral board concluded that: "Since the objectors have demonstrated cause to find the nomination papers of the HWP candidates for suburban commissionerships . . . offices invalid, the objections are sustained, . . . "



Objectors however, alleged that the entire set of nomination papers must be deemed invalid, when a component of said nomination papers is invalid.

The electoral board committed error in not enforcing the requirement of §10-2 of the Election Code that the entire petition, *including each of its district components*, must be signed by the requisite member of registered voters. Specifically, having deemed the suburban component of the Nomination Papers invalid, the Electoral Board was obligated to invalidate the Nomination Papers in their entirety and to strike *all* Harold Washington Party candidates from the ballot.

9. As regards objection #3, the electoral board, with one member dissenting, granted the motion of the Harold Washington Party to dismiss the objection that the name "Harold Washington Party" could not be used by the new political party, The Board majority entered this ruling, even though it expressly found that:

> "Section 10-5 prohibits new political party petitions for nomination from bearing the same name as, or including the name of, any established political party as defined in Article 10."

And:

> " . . . the Board finds that the prohibition of §10-5 does extend to the County HWP candidates now before this Board, since the HWP is an established party as defined by Article 10."

And yet, the Electoral Board still refused to apply said prohibitions in § 10-5 to the Nomination Papers, Under the theory that authorization was received from a former candidate. The Petitioners submit that this ruling is in error; that the Nomination Papers should have been invalidated and all candidates should have been stricken from the ballot.

10. In paragraph 4 of the Objections, Petitioners attacked R. Eugene Pincham's eligibility as a Harold Washington Party candidate for County Board Commissioner and alleged a false statement of candidacy in connection therewith. The Electoral Board concluded that since Mr. Pincham won the Democratic Primary for County Commissioner, there was no prohibition against his "switch(ing) parties". The Electoral Board further erroneously found that the "sore loser" statute, although clear and unambiguous, would only have prohibited Mr. Pincham from seeking election as a Harold Washington Party candidate for the office of President of the Board of County Commissioners.

    The Electoral Board erred by misinterpreting the express provisions of §10-2 of the Election Code so as to permit Mr. Pincham, a candidate who was defeated in the Democratic party Election, held on March 20, 1990, to be a Harold Washington Party candidate at the general election.

11. The Petitioners, for the purpose of this action, do not seek judicial review of the Electoral Board rulings relative to paragraphs 5 and 6 of the Objectors' Petition.

12. The Petitioners seek review of each of the Electoral Board rulings identified above, which Petitioners maintained are arbitrary and erroneous as a matter of law, with the exception of those rulings identified in paragraph 11 of this Petition.

WHEREFORE, Petitioners pray that this Honorable court review said rulings of the Electoral Board and reverse or modify the aforesaid rulings, as the case may be, and enter judgment that the Nomination Papers of the Harold Washington Party and that the nomination of all candidates appearing thereon be declared invalid and further enter judgment that the name of the Harold Washington Party and the names of all candidates listed on the



Nomination Papers *not* appear on the November 6, 1990 General Election ballot.

/s/ George N. Leighton
George N. Leighton
Attorney for the Petitioners

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Suite 1010
Chicago, Illinois 60602
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* * *

[Copy Of Electoral Board Decision, attached as an exhibit, omitted in printing.]

STATE OF ILLINOIS )
) SS.
COUNTY OF COOK )

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

---

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES DEANES, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, ROBERT E. BROOKS, JR., MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH

Petitioners

-vs-

STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES Constituting the COOK COUNTY OFFICERS ELECTORAL BOARD; and DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA

Respondents

No.
90 CO 00244

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## PETITION FOR JUDICIAL REVIEW OF ELECTORAL BOARD DECISION 90 COEB-2

NOW COME the petitioners, BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES DEANES, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, HELEN E. JONES, ROBERT E. BROOKS, JR., MELLO SAM H. CLORA, JUDY MARIE HAWTHORNE, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE J. SMITH, by their co-counsel, Roosevelt Thomas and Nathaniel House, Jr., and petition this Honorable Court, pursuant to Ill. Rev. Stat. Ch. 46, Sec. 10-10.1 for Judicial Review of the August 29, 1990 decision of the Cook County Officers Electoral Board sustaining in part, the objections of respondents to the Nominating papers of the Harold Washington Party and its Candidates for county wide office and members of the Board of Cook County Commissioners outside the City of Chicago. In support of this petition, Petitioners state as follows:

1. On August 13, 1990, certain objectors filed six objections to the Nominating Papers of the Harold Washington Party. Among these objections was objection no. [sic] 5 and 6, which stated that every one of the signatures filed by the Harold Washington Party was invalid. On August 20, 1990, Petitioners filed their Motion to Strike and Dismiss objections 5 and 6 because they were "manifestly, and obviously prima facie flagrantly fraudulent." On August 29, after an evidentary [sic] hearing on this issue, the Electoral

Board granted the Petitioners' Motion to Strike and Dismiss objections 5 and 6 because these objections were prima facie fraudulent. The fraud in objections 5 and 6 permeates the entire petition of objections filed by the objectors, and therefore the entire petition of objections should be dismissed.

2. The Electoral Board entered an order filing the nomi--nating papers of Robert E. Brooks, Jr., Mello Sam H. Clora, Judy Marie Hawthorne, Chester LeSure, Celia Duncan, Don C. Passmore, Jr., and Bobbie J. Smith, as candidates for the Cook County Board of Commissioner to be elected from outside the City of Chicago. This ruling is in error. The Harold Washington Party maintains that: a) That the Party filed more than 60,000 valid signatures; b) It is unconstitutional to require the Harold Washington Party to gather more signatures to field County candidates than it would need to field a slate of candidates for State-wide office; c) It is impermissible to impose geographic/ minimum signature requirements; d) The vague election code should be construed to permit the party to field its candidates; and e) The party has demonstrated a modicum of support and deserves to be on the ballot.

3. In regard to the use of the Harold Washington Party name, the Petitioners concur with the decision of the majority of the Electoral Board that the Harold Washington Party name can be used for the November election. However, the Petitioners do not concur with the finding of the Electoral Board when they found in their written opinion that the prohibition of Sec. 10-5 does extend to the County Harold Washington Party. Notwithstanding the proper ruling of the Board, the Petitioners and Board Chairman Kusper (see footnote 10 of Board's Decision) maintain that permission was not needed because there is no established Harold Washington Party in the political subdivision of Cook County.



WHEREFORE, Petitioners pray that this Honorable Court review said rulings of the Electoral Board, and reverse or modify the aforesaid rulings, and enter judgment that entire objector's petition be dismissed, allow the County-wide Commissioners to appear on the ballot for the November 6, 1990 General Election and for such other and further relief as this court deems just.

---

Roosevelt Thomas, one of the attorneys for petitioners

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Atty. No. 21412

* * *

[Copy of Electoral Board Decision, attached as an exhibit, omitted in printing.]

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IN THE APPELLATE COURT, STATE OF ILLINOIS
FIRST DISTRICT

| | | |
|---|---|---|
| DOROTHY REED, et al., Petitioners-Appellees, v. STANLEY T. KUSPER, JR., et al., Respondents-Appellants, v. BARBARA J. NORMAN, et al., Petitioners-Appellants, v. STANLEY T. KUSPER, JR., et al., Respondents-Appellees. | ) | NO. 1-90-2708 |

ORDER

This cause coming to be heard on Respondents-Appellants' motion to stay the enforcement of the order of the circuit court to print the ballots for the November 6, 1990 election without the name of the Harold Washington Party, and the court being fully advised in the premises;

IT IS HEREBY ORDERED that the order of the circuit court entered on September 20, 1990, requiring that the ballots for the November 6, 1990 election be printed without the Harold Washington Party or its candidates appearing on the ballot, be and is hereby stayed until further order of the Appellate Court.



ORDER ENTERED
SEP 26 90

Dom J. Rizzi
Justice

William S. White
Justice

_____
Justice

SUPREME COURT OF THE UNITED STATES

*No.*
A-309

BARBARA J. NORMAN, ET AL.,
Petitioners

v.

DOROTHY REED, ET AL.

ORDER

An Emergency Petition for Stay of Enforcement of Decision of the Illinois Supreme Court filed October 12, 1990 and for Temporary Restraining Order and injunction has been filed with me in my capacity as Circuit Justice.

Because the Emergency Petition raises a federal constitutional question of sufficient substance to merit the attention of the full Court, I have decided to order that the status quo be maintained for a sufficient period of time to enable this Court to review the matter. The mandate of the Illinois Supreme Court is therefore stayed or, if necessary, recalled, pending further order of this Court.

IT IS SO ORDERED.

/s/ John Paul Stevens
Associate Justice of the Supreme
Court of the United States

Dated this 22nd
day of October, 1990.

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SUPREME COURT OF THE UNITED STATES

THURSDAY, OCTOBER 25, 1990

ORDER IN PENDING CASE

A-309 BARBARA J. NORMAN, ET AL. V. DOROTHY REED, ET AL.

The application for stay presented to Justice Stevens and by him referred to the Court is granted to the extent that the August 29, 1990 decision of the Cook County Officers Electoral Board, No. 90COEB-2, is to remain in effect pending the timely filing and disposition of a petition for a writ of certiorari.

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SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

May 20, 1991

Mr. Burton Stephen Odelson
Special State's Atty-Cook Cty.
3318 West 95th Street
Evergreen Park, IL 60642

Re: Barbara J. Norman, et al.
v. Dorothy Reed, et al.
No. 90-1126
Cook County Officers Electoral Board, et al.
v. Dorothy Reed, et al.
No. 90-1435

Dear Mr. Odelson:

The Court today entered the following order in each of the above entitled cases:

The motion of Independent Voters of Illinois-Independent Precinct Organization for leave to file a brief as amicus curiae in No. 90-1126 is granted. The petition for a writ of certiorari is granted. The cases are consolidated and a total of one hour is allotted for oral argument.

Very truly yours,
/s/ William K. Suter
William K. Suter, Clerk

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(5)

No. 90-1126

Supreme Court, U.S.
FILED
JUL 5 1991
OFFICE OF THE CLERK

In The

# Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELDIA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE SMITH,

*Petitioners,*

vs.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES, constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY ILLINOIS; ARNETT HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET, constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

*Respondents.*

**On Writ Of Certiorari To The Supreme Court Of Illinois**

## PETITIONERS' BRIEF ON THE MERITS

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## QUESTIONS PRESENTED

I

Do the requirements of Sec. 10-2, Ch. 46, Ill. Rev. Stat. 1989, The Illinois Election Code, as construed by the Illinois Supreme Court order of October 12, 1990,

(1) that the Harold Washington Party (HWP) nominating petitions for suburban Cook County Board Commissioners contain the signatures of 25,000 suburban Cook County voters, and

(2) that the HWP nominating petitions for Chicago Cook County Board Commissioners also contain the signatures of 25,000 Chicago voters, a total of 50,000 Chicago and suburban Cook County voters' signatures for these Cook County-wide offices, and

(3) that the HWP nominating petitions for the Cook County-wide offices of State's Attorney, Sheriff, Assessor, Treasurer, Board of Tax Appeals Commissioner, Clerk, Superintendent of Schools, and President of the Cook County Board contain the signatures of 25,000 Chicago and/or suburban Cook County voters, and

(4) that nominating petitions for Illinois statewide offices need only contain the signatures of 25,000 Illinois voters from anywhere within the State

violate the First, Fourteenth and Fifteenth Amendments to the United States Constitution and this Court's contrary rulings in *Moore v. Ogilvie*, 394 U.S. 814 (1969), and *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979)?

## QUESTIONS PRESENTED – Continued

II

Does Sec. 10-5.2, Ch. 46, Ill. Rev. Stat. 1989, the Illinois Election Code, construed by the Illinois Supreme Court order of October 12, 1990 as prohibiting the HWP, an established political party in the City of Chicago, from using the HWP name in expanding the HWP outside the City of Chicago into Cook County, Illinois, by seeking to nominate (and elect) HWP candidates to Cook County, Illinois elective offices, violate the First, Fourteenth and Fifteenth Amendments to the United States Constitution and this Court's contrary rulings in *Moore* and *Socialist Worker's Party?*



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## CITATIONS TO OPINIONS & JUDGEMENTS BELOW

The unreported order and decision of the Cook County Officers Electoral Board (CCOEB) of August 29, 1990 placing the HWP and its candidates on the Cook County, Illinois November 6, 1990 general election ballot appears in Appendix D, pages 25-55 of the Petition for Writ of Certiorari No. 90-1126.[1] The unreported order of the Circuit Court of Cook County, Illinois of September 20, 1990 reversing the decision of the CCOEB and removing the HWP and its candidates from said ballot appears in HWP 90-1126 App. C, p. 15-24. The unreported order of the four (4) majority Democratic Party Justices of the Illinois Supreme Court of October 12, 1990 reversed in part and affirmed in part the decision of the Circuit Court of Cook County and ordered the HWP and its candidates removed from the aforesaid ballot, the three Republican Party Justices dissented in two unreported dissenting opinions in which all three dissenting justices joined and which are set forth in HWP 90-1126 App. B, p. 2-14. Although the Illinois Supreme Court October 12, 1990 majority order twice states that "an opinion {is} to be filed at a later date . . . setting forth the reasons supporting this order," no such opinion has been filed.

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[1] The Petition for a Writ of Certiorari No. 90-1126 was filed herein by the HWP candidates and will hereinafter be referred to as HWP 90-1126, App. and page number.

## JURISDICTION

The order of the Illinois Supreme Court, the state court of last resort, removing the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot of which reversal is herein sought, was entered on October 12, 1990. The instant HWP 90-1126 was filed herein on October 19, 1990 as required by 28 USC Section 2101 (c) and United States Supreme Court Rule 13 (1). This Court's jurisdiction is invoked under 28 USC Section 1257 (2) and (3). This Court granted certiorari on May 20, 1991.

## STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievance."

The Fourteenth Amendment to the United States Constitution provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."



The Fifteenth Amendment to the United States Constitution provides:

> "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude."

Ch. 46, Secs. 10-2 and 10-5.2, Illinois Rev. Stat. 1989, the Illinois Election Code are lengthy and their pertinent texts are set forth in HWP No. 90-1126, at pages 4-5.[2]

## STATEMENT OF THE CASE

The members, supporters and voters of the Harold Washington Party (HWP), a Chicago, Illinois political party, are predominantly Chicago, Cook County, Illinois African-Americans and other politically locked out groups and persons. The party was founded and it exists, in part, because of the insults, the disrespect and the denial of reciprocal political empowerment and benefits to these voters by the Chicago Cook County politically controlled Chicago, Cook County Illinois Democratic Party, to which these HWP members, supporters and voters formerly belonged. The HWP was founded and incorporated in Illinois as a political party in 1989. It slated a candidate for Mayor of the City of Chicago in the April 1989 general mayoral election, with nominating petitions which contained the signatures of over 104,000

[2] Sections 10-2 and 10-5 of Chapter 46 Ill. Rev. Stat. 1989, the Illinois Election Code, are the only statutes involved and will be hereinafter referred to simply by the section number.

Chicago registered voters. In the April 1989 Chicago general mayoral election the HWP mayoral candidate received 330,000 straight HWP votes, and a gross total of 428,000 votes. The HWP thereby became an established political party in the City of Chicago, under Section 10-2 of the Illinois Election Code. Although Richard M. Daley, the Democratic Party mayoral candidate won the Chicago April, 1989 mayoral election with a total of 575,000 votes, he received only 295,000 straight Democratic Party votes in said election, 35,000 straight party votes less than the straight HWP votes received by the HWP mayoral candidate. The Republican Party mayoral candidate received less than 40,000 votes, which were less than 5% of the total votes cast in that election, for which reason the Republican Party failed to qualify as an established political party in the City of Chicago under the provisions of Sec. 10-2.

To expand itself as an established political party into Cook County, Illinois, the HWP on August 6, 1990, filed in the office of the Clerk of Cook County, Illinois HWP nominating petitions which contained over 60,000 Chicago and Cook County registered voters' signatures, to place its therein named candidates on the November 6, 1990, ballot for the Cook County, Illinois offices of President Cook County Board of Commissioners, Sheriff, State's Attorney, Assessor, Clerk, Treasurer, Superintendent of Education, Commissioners of the Board of Tax Appeals, suburban Cook County and Chicago Commissioners of the Cook County Board, and Water Reclamation District Commissioners.



Of the 60,000 voters' signatures on the HWP nominating petitions, 44,000 were signatures of Chicago registered voters. About 7,800 signatures were of suburban Cook County (excluding Chicago) registered voters. Approximately 8,000 signatures were of registered voters from both Chicago and suburban Cook County and were the HWP nominating petitions for Water Reclamation District Commissioners only.

On August 13, 1990 verified objections, individually subscribed and sworn to by five (5) Chicago Cook County voters, supposedly civic spirited citizens, Dorothy Reed, Valerie Sutton, Patton L. Feichter, Ervin S. Ricks and Jeanie Barrera, Respondents herein, and 6,000 *"Appendix Recapitulation"* sheets in support of the objections were filed in the Cook County Clerk's office challenging the validity of the HWP nominating petitions and which sought to remove the HWP and its candidates from the November 6, 1990 Cook County general election ballot. (J.A. 6-23)[3]

The objectors' 6,000 *"Appendix Recapitulation"* sheets, numbered 1 through 6,000, were the objectors' purported recapitulations of the corresponding HWP nominating petitions, numbered 1 through 6,000, and they ostensibly specified the alleged defects in each of the 60,000 voters' signatures on the 6,000 HWP nominating petitions. (J.A. 26)

The objectors' verified objections and their intended supporting 6,000 *"Appendix Recapitulation"* sheets alleged

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[3] (J.A. 6-23) refers to the pages of the printed joint appendix, filed herein.

that the HWP nominating petitions were legally insufficient on the grounds that the HWP petitions: 1) Did not contain a judicial slate; 2) Did not contain 25,000 Cook County suburban voters' signatures; 3) Illegally contained the name R. Eugene Pincham, an alleged ineligible candidate; 4) improperly used the HWP name; and 5 & 6) contained illegal, improper, nongenuine signatures of registered and unregistered voters.

The HWP candidates filed with the CCOEB, also a Respondent in HWP 90-1126, motions to strike and dismiss objections one (1) through four (4) on legal grounds, (J.A. 33-53). As to objections numbers five (5) and six (6), i.e., the HWP nominating petitions contained illegal, improper, non-genuine and unregistered voters' signatures, the HWP candidates filed a motion to strike and dismiss these number 5 and 6 objections on the ground, inter alia, that each of the Objectors' 6,000 *"Appendix Recapitulation"* sheets, numbers 1 through 6,000, which ostensibly specified the alleged defects in each of the 60,000 signatures on the HWP nominating petitions, were in fact photostatic-duplicate copies of one and the same original. By reason thereof all of the objector's 6,000 *"Appendix Recapitulation"* sheets asserted that each of the 60,000 signatures on the HWP nominating petitions had the identical alleged defect. The 6,000 *"Appendix Recapitulation"* sheets were therefore prima facie fraudulent and illegal. (J.A. 56-67).

Only one of these photocopied 6,000 *"Appendix Recapitulation"* sheets is included in the joint appendix. (J.A. 26) All 6,000 of these *"Appendix Recapitulation"* sheets however have been transmitted to this Court in the record on appeal.



The CCOEB held an evidentiary hearing on the HWP candidate's motion to dismiss objections numbers five and six, based on the HWP candidate's allegations that the objectors' 6,000 *"Appendix Recapitulation"* sheets were fraudulent.

The uncontradicted direct and cross examination testimony of Bonnie McGuire, a witness for the objectors on said evidentiary hearing before the CCOEB, established that the five objectors' sworn objections were false, and that their challenge to remove the HWP and its candidates from the November 6, 1990 ballot was stealthily instigated by and on behalf of Cook County Democratic Party Chairman, Thomas Lyons, and the Democratic Party's Attorney, Ray Simon, in whose law office the photocopied 6,000 *"Appendix Recapitulation"* sheets were first seen by McGuire, and which were immediately thereafter filed by the objectors' attorney in support of their objections. (Vol. 8, tr 8/22/90, p. 14-103, tr. 8/23/90, p. 8-144)[4]

The undisputed testimony of Bonnie McGuire further established that on August 13, 1990, when the objectors filed their objections, no one had checked or compared any address or signatures on the HWP nominating petitions with any address or signatures of any registered voters on the official voters' registration card, commonly referred to as the binder, and therefore, there could not have been a valid or reasonable determination that the

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[4] (Vol. 8, tr. 8/22/90, p. 14-103) refers to the volume, the date and the pages of the transcript of the proceedings before the CCOEB, transmitted to this Court as a part of the record on appeal.

signatures on the HWP nominating petitions were invalid or not genuine, as stated in the objectors' *"Appendix Recapitulation"* sheets, and additionally, that no one checked with or ascertained from any signatory or any circulator of the HWP nominating petitions, or from any other source, that such signatures were not genuine, improper or unauthentic.

## DECISIONS AND PROCEDURAL HISTORY BELOW

Upon conclusion of the evidentiary hearing and arguments of counsel, on August 29, 1990, the CCOEB rendered its written decision. HWP 90-1126 App. D, p. 25-55. The CCOEB's decision overruled the objectors' objections and sustained the HWP candidates' motion to strike and dismiss objections five and six of the objectors' objections, i.e. the HWP nominating petitions contained illegal signatures.

The CCOEB decreed that the use of the HWP name was not improper and sustained the HWP candidates' motion to strike and dismiss that objection, to which one member dissented in part. The CCOEB likewise ruled that R. Eugene Pincham's candidacy on the HWP nominating petitions was valid and sustained the HWP's motion to dismiss this objection. The CCOEB similarly ruled on the failure to slate judicial candidates objection, one member dissenting. The CCOEB upheld the objectors' challenge to the HWP Water Reclamation and Suburban Cook County Board of Commissioners nominating



petitions on the ground that these two nominating petitions lacked the 25,000 voters' signatures, required according to the CCOEB's interpretation of Sec. 10-2.

Thus, the CCOEB held that the HWP nominating petitions for the Cook County offices of President of the Cook County Board of Commissioners, State's Attorney, Assessor, Clerk, Sheriff, Treasurer, Superintendent of Education, Board of Tax Appeals Commissioners and the Chicago Cook County Board Commissioners were valid and the CCOEB certified these HWP candidates to the November 6, 1990 general election ballot. Conversely, the CCOEB ruled invalid the HWP Water Reclamation nominating petitions because they did not contain 25,000 Chicago-Cook County registered voters, signatures, (which ruling is uncontested by petitioners before this Court), and that because the HWP nominating petitions for Suburban Cook County Board Commissioners did not contain 25,000 suburban Cook County registered voters' signatures, said nominating petitions were also invalid, and that the HWP candidates for these two offices would not be placed on the November 6, 1990 ballot.

The objectors did not seek judicial review of the CCOEB's decision which dismissed objections numbered five and six based on their fraudulent *"Appendix Recapitulation"* sheets. The objectors filed a petition in the Circuit Court of Cook County for judicial review of that portion of the CCOEB's decision which dismissed objections numbered one through four, i.e., (1) no judicial slate, (2) the lack of 25,000 Cook County suburban voters' signatures, (3) use of the Harold Washington Party name, and (4) R. Eugene Pincham, an ineligible candidate. The HWP candidates filed a petition for judicial review only of the

CCOEB's decision which struck the HWP candidates for suburban Cook County Board Commissioners from the November 6, 1990 ballot.

On September 20, 1990 the Circuit (Review) Court entered its decision, HWP No. 90-1126 App. C. p. 15-24, removing the HWP and all the HWP candidates from the Cook County November 6, 1990 ballot, on the ground that "the failure to obtain 25,000 signatures for the suburban Cook County Commissioners candidates voids the entire slate of Cook County candidates of the Harold Washington Party."

The HWP candidates appealed to the Illinois Appellate Court. The objectors moved for a direct and expedited appeal to the Illinois Supreme Court, which granted the motion. On October 12, 1990, a majority, the four (4) Democratic Party Justices of the Illinois Supreme Court, strictly along partisan political party lines, entered an order which affirmed the Circuit (Review) Court's decision removing the HWP and its candidates from the November 6, 1990 ballot. HWP No. 90-1126 App. D. p. 2-5. The four (4) majority Democratic Party Illinois Supreme Justices held that Sec. 10-2 required the HWP nominating petitions for suburban Cook County Board Commissioners to contain 25,000 signatures of suburban Cook County registered voters, and that Sec. 10-5 prohibited the HWP from using the name "Harold Washington Party" in expanding from Chicago into suburban Cook County. The three (3) Republican Party Justices of the Illinois Supreme Court dissented, stating that "the majority result in the present case seemingly conflicts with the Supreme Court's decision in *Illinois State Board of Election v. Socialist Workers Party*, supra, which invalidated, on



constitutional grounds, an earlier provision in Sec. 10-2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than statewide. The majority's construction of the statute produces a similar disparity." HWP 90-1126 App. B. p. 6-14. The HWP candidates petitioned this Court for a Writ of Certiorari which was granted on May 20, 1990.

## SUMMARY OF ARGUMENT

1. The CCOEB and the four majority Illinois Supreme Court Justices erroneously interpreted Section 10-2, as requiring the HWP nominating petitions for suburban Cook County Board Commissioner to contain the signatures of 25,000 suburban Cook County voters. Their further interpretation that section 10-2 likewise required the HWP nominating petitions for Chicago Cook County Board Commissioners to also contain an additional 25,000 Chicago voters' signatures mandated that the HWP nominating petitions for these Cook County offices contain 50,000 Chicago, and Cook county voters' signatures, whereas only 25,000 voters' signatures from anywhere within the state are required on the nominating petitions of a new political party for state-wide offices.

These interpretative decisional signature requirements by the CCOEB and the four majority Illinois Supreme Court Justices violate political rights under the First Amendment, equal protection rights under the Fourteenth Amendment, voters' rights under the Fifteenth Amendment and this Court's holdings in *Moore v. Ogilvie*, 394 U.S. 814 (1969) and *Illinois State Board of Elections v.*

*Socialist Workers Party*, 440 U.S. 173 (1979). These decisions must therefore be reversed.

2. The four majority Illinois Supreme Court Justices' decision that the HWP name was improperly used, and their decision removing the HWP and its candidates from the November 6, 1990 Cook County general election ballot for that reason are totally unsupported by the evidence and are diametrically opposed to the uncontradicted evidence and this Court's holdings in *Moore* and *Socialist Workers' Party*. Said decision must therefore likewise be reversed.

## ARGUMENT

### I

**THE CCOEB AND THE ILLINOIS SUPREME COURT'S DECISIONS THAT SECTION 10-2 REQUIRED THE HWP NOMINATING PETITIONS FOR COOK COUNTY OFFICES CONTAIN A TOTAL OF 50,000 SUBURBAN COOK COUNTY AND CHICAGO VOTERS' SIGNATURES, WHEN ONLY 25,000 VOTERS' SIGNATURES ARE REQUIRED ON NOMINATING PETITIONS FOR STATEWIDE OFFICES, VIOLATE FIRST, FOURTEENTH AND FIFTEENTH AMENDMENT CONSTITUTIONAL RIGHTS AND THIS COURT'S CONTRARY RULINGS IN *MOORE V. OGILVIE*, 394 U.S. 814 (1969) AND *ILLINOIS STATE BOARD OF ELECTIONS V. SOCIALIST WORKERS PARTY*, 440 U.S. 173 (1979).**

The four majority Illinois Supreme Court Democratic Party Justices erroneously ruled that Sec. 10-2 required that the HWP nominating petitions for Chicago Cook County Board Commissioners contain the signatures of at least 25,000 Chicago voters, and that the HWP nominating petitions for suburban Cook County Board Commissioners additionally contain the signatures of at least 25,000 suburban Cook County voters. This ruling was patently erroneous, as the two dissenting opinions of the three Illinois Supreme Court Republican Justices convincingly dogmatized. The four majority Illinois Supreme Court Democratic Party Justices further erroneously ordered the HWP and all its candidates for the other Cook County Illinois elective offices removed from the Cook County November 6, 1990 general election ballot, on the ground that the HWP nominating petitions for suburban Cook County Board Commissioners did not contain 25,000 suburban Cook County voters' signatures, and therefore the HWP nominating petition did not contain a full slate of candidates as required by Sec. 10-2.



We initially invite this Court's attention to the unusual and unprecedented circumstances of these erroneous majority rulings. Even though the CCOEB erroneously ruled that Section 10-2 required at least 25,000 Cook County suburban voters' signatures on the HWP nominating petitions for suburban Cook County Board commissioners, the CCOEB nevertheless ruled that this signature deficiency warranted removal of only the HWP candidates for suburban Cook County Board Commissioners from the November 6th ballot, that this signature deficiency did not merit removal of the HWP and all its other candidates for the other elective Cook County offices from said ballot. The HWP candidates appealed to the Cook County Circuit Court that portion of the CCOEB ruling, inter alia, which mandated 25,000 suburban Cook

County voters' signatures on the HWP nominating petitions for suburban Cook County Board Commissioners. The Cook County Circuit Court affirmed the ruling. The objectors appealed that portion of the CCOEB ruling, inter alia, which permitted the other HWP candidates for the other Cook County elective offices to remain on the November 6th ballot, and the Circuit Court reversed this CCOEB ruling.

Both rulings of the Circuit Court, i.e. the 25,000 suburban signature requirement and removal of the HWP and its candidates from the ballot, were appealed by the HWP candidates to the Appellate Court of Illinois. Pursuant to the objectors' motion under Illinois Supreme Court Rule 302 (b), which provides, "After the filing of the notice of appeal to the Appellate Court in *a case in which the public interest requires prompt adjudication by the Supreme Court*, the Supreme Court or a Justice thereof may order that the appeal be taken directly to it", (Italics ours), the Illinois Supreme Court entered the extremely rare order of an expedited direct appeal to that Court. After oral argument the four majority Democratic Party Justices of the Illinois Supreme Court ordered:

> "With an opinion to be filed at a later date: . . . By majority vote of this Court the further holdings of the Circuit Court are affirmed. That section 10-2 requires that a petition to form a new political party contain the above described number of [25,000] signatures from all components of the petition, that is, from the components of Chicago and the suburbs; that because of this failure to comply with Section 10-2 the names of all candidates listed and nominated according to the appellants' petition fail to qualify for placement on the ballot at the general election on November 6, 1990."



The success of the HWP efforts to expand from Chicago into Cook County would adversely impact on the Democratic Party and its candidates in the November 6th elections simply because the HWP candidates would attract voters traditionally taken for granted by the Chicago Cook County Democratic Party from the Democratic Party candidates in that election and possibly cause their defeat. This indeed was the basic reason in the first instance for the Cook County Democratic Party's leaderships' clandestine opposition and objections to the HWP nominating petitions and their surreptitious efforts before the CCOEB to remove the HWP and its candidates from the ballot. Apparently the four majority Democratic Supreme Court Justices recognized this dilemma confronting the Cook County Democratic Party and its candidates. It is apparent that these four Democratic Party Justices were unable to rise above their partisan political party allegiances.

These Illinois Supreme Court majority justices did not rely on, discuss or even cite a single case authority. More importantly, they completely ignored this Court's decision in *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979), another Chicago, Illinois election case in which access to the ballot was denied by local election officials and which was reversed by this Court. Even though this Court's decision in *Socialist Workers Party* was repeatedly called to the majority's attention in the HWP brief, the CCOEB brief and by their

attorneys on oral argument, and also by the three dissenting Justices in their two dissenting opinions, the four (4) majority Justices nevertheless chose to ignore it. Such total disregard of an applicable United States Supreme Court decision is unprecedented.

The dissenting opinion of Illinois Supreme Court Justice Ryan, in which Justices Moran and Miller joined, poignantly concludes that the majority "has ignored contradictory and limiting language of Section 10-2 *in order to find that the [HWP] petition did not have the required number of signatures*" (Italics ours). Justice Ryan's dissenting opinion thereafter forcefully proclaimed:

> "In Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979), the Supreme Court stated that restrictions on access to the ballot burden two fundamental rights, the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters to cast their votes effectively . . .
>
> In light of the holding in *Socialist Workers Party*, it is incumbent upon this Court to avoid a narrow and strict construction of the Election Code, which denies the Harold Washington Party candidates access to the ballot."

The dissenting opinion of Illinois Supreme Court Justice Miller, in which Justices Moran and Ryan joined, likewise admonished the four majority justices:

> "The majority's result in the present case seemingly conflicts with the Supreme Court's decision in Illinois State Board of Election v. Socialist Workers Party (1979), 440 U.S. 173."

The minority's admonition went unheeded by the majority. The Illinois Supreme Court majority made no



effort to distinguish *Socialist Worker's Party*. Instead the majority flagrantly disregarded it, disrespected it, defied it, and even disobeyed it.

Additionally, the majority failed to fulfill its twice expressed assurances in its order that "an opinion [would] be filed at a later date," and "an opinion will later be filed setting forth the reasons supporting this order." Even though the Illinois Supreme Court granted the objectors' request for a direct expedited appeal because of the case's "public interest" yet, from October 12, 1990, the date of the majority order, to this date, no opinion has been filed by the majority. This failure to file an opinion is likewise unprecedented.

Section 10-2 however, did not require 25,000 Cook County voters' signatures for Cook County offices, or 25,000 Chicago voters' signatures for Chicago offices, or 25,000 Chicago voters' signatures for Chicago Cook County Board commissioners, and then an additional 25,000 suburban Cook County voters' signatures for suburban Cook County Board commissioners, as the Illinois Supreme Court majority Justices and the CCOEB incorrectly held.

We emphasize that the Illinois Election Code, Ch. 46, Paragraph 10, particularly paragraph 10-2, Ill. Rev. Statue (1989), is a far cry from a model code. The sections of the code are vague, unintelligible, contradictory, uncertain, equivocal, ambiguous and inconsistent. The Chicago Tribune editorial of Sunday, August 26, 1990, Section 4, page 2, pointed out that, "State election laws have too many vagaries." Another Chicago Tribune editorial entitled,

"Make Room for the Washington Party," Tuesday, September 4, 1990, Section 1, page 12, stressed the uncertainties of the Election Code thus, "Illinois case law says that when the election statutes are vague, judges should lean in favor in allowing a candidate on the ballot. That's the way it should be." Rick Bryant, staff writer for the Chicago Southtown Economists, a daily newspaper, in Sunday's, September 30, 1990 edition at page 1, in an article entitled, "3rd Party's impact goes beyond court," stated, *"The Illinois election code is extremely vague. Politicians confess the code was deliberately written this way to give Democrats and Republicans great latitude to challenging third parties."* The Chicago Southtown Economist editorial of September 23, 1990 page A 10, also admits that, "The statutes and case law as they apply to the Washington (HWP) case are far from clear." The Chicago Sun-Times editorial of the same date, page 42, entitled "Rigged laws baffle 3rd parties," expounds, "The rules the [Circuit Court] judge followed are blatantly designed to create a political playing field that allows for only two teams – Democrats and Republicans. In every way imaginable, Illinois election law discourages, dissuades, deters and otherwise disheartens any candidates from outside the established political order. *The law is rigged against independent and third party candidates . . . The sun may rise in the west before the legislature ever corrects this injustice . . . "* (Italics ours).

Section 10-2 is so vague, contradictory, inconsistent and incomprehensible that it defies reasonable, mutually agreed understanding, for which reasons the section violates constitutional due process. The dissenting opinion of Illinois Supreme Court Justice Ryan vividly exclaims



the glaring contradictions, and inconsistencies of Section 10-2 thus:

> "As to the provisions of the Election Code concerning the required number of signatures in a new party's petition, here again the majority of this Court adopted a narrow and strict construction of the language of Section 10-2. *In fact, the provisions of Section 10-2 are contradictory in this regard* . . . The last sentence of the fourth paragraph of Section 10-2 would limit the number of signatures required from all of Cook County to 25,000, whereas the next to the last sentence of the seventh paragraph of Section 10-2 appears to require 25,000 signatures from each component of the county petitions; that is, the City of Chicago and the suburban areas. The last sentence of the seventh paragraph of Section 10-2 does not require that the petition contain 25,000 signatures from all components . . . Instead, that sentence provides: 'the entire petition, including all components,' must be signed by the required number of signatures, so it is the entire petition that must have 25,000 signatures . . . A logical construction would be that the entire petition for the formation of a new party in Cook County must have 25,000 signatures."

The next to the last sentence and the last sentence of the fourth paragraph of Section 10-2, referred to above by Justice Ryan as "limit[ing] the number of signatures required from all of Cook County to 25,000," provide as follows:

> If such new district or political party shall be formed for any district or political subdivision less than the entire state, such petition shall be signed by qualified voters equaling in number not less than 5% of the number of voters

who voted at the next preceding regular election in such district or political subdivision in which such district or subdivision voted as a unit for the election of officers to serve its respective territorial area. *However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for state-wide general election, such statewide petition signature requirement shall be the minimum for such district or political subdivision new political party petition.*" (Italics ours).

The next to the last sentence of the seventh paragraph of Section 10-2, which conversely, as stated in Justice Ryan's dissenting opinion, "appears to require 25,000 signatures from each component . . . the City of Chicago and the suburban areas", provides:

*"Each component of the petitions for each district from* which an officer is to be elected *must be signed by qualified voters of the district* equaling in number not less than 5% of the number of voters who voted at the next preceding regular election in such district at which an officer was elected to serve the district." (Italics ours).

But then the very next sentence, i.e., the last sentence of the seventh paragraph of Section 10-2, as pointed out in Justice Ryan's dissent, contrarily, "does not require that the petition contain 25,000 signatures from all components." That last sentence reads thus:

*"The entire petition, including all components, must be signed by a total of qualified voters of the entire political subdivision equaling in number not less than 5%* of the number of voters who voted at the next preceding regular election in such political subdivision . . . " (Italics ours).



In light of and based upon these aforementioned conflicting provisions of Section 10-2 Justice Ryan aptly reasoned that "a logical construction would be that the entire petition for the formation of a new party in Cook County must have 25,000 signatures." Justice Ryan accurately concluded that "the majority of this Court has read the signature requirements narrowly and strictly and has ignored contradicting and limiting language of Section 10-2 in order to find that the [HWP] petitions did not have the required number of signatures."

Having rightly or wrongly construed Section 10-2 as requiring the HWP nominating petitions for, (1) suburban Cook County Board Commissioner to contain 25,000 suburban Cook County voters' signatures, (2) Chicago Cook County Board Commissioners to contain 25,000 Chicago voters' signatures, and (3) Cook County Sheriff, State's Attorney, Assessor, Treasurer, Clerk, Board of Tax Appeal Commissioners, President Cook County Board of Commissioner and Superintendent of Schools to contain 25,000 Chicago and/or suburban Cook County voters' signatures, these interpretations by the CCOEB and the majority Illinois Supreme Court Justices notoriously violate the HWP candidates, their voters and supporters' (1) political rights guaranteed under the First Amendment, (2) equal protection rights guaranteed under the Fourteenth Amendment, (3) the right to vote guaranteed under the Fifteenth Amendment, and this Court's holdings in *Moore v. Ogilvie*, 394 U.S. 814 (1969), and *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979).

The CCOEB, like the four majority Illinois Supreme Court Justices, failed to cite a single case authority in

support of its construction of Sec. 10-2's 50,000 Chicago-Cook County voters' signature requirement. Although, unlike the four (4) majority Justices, the CCOEB did cite *Socialist Workers Party*, simply stating, "In a large county such as Cook, this 5% signature requirement works out to be considerably larger than that required of state-wide candidates. Such an illogical scheme was struck down in *Socialist Workers Party*." Yet, the CCOEB made absolutely no effort to distinguish *Socialist Workers Party*, and offered no explanation for its inapplicability to the case at bar. Thus, the CCOEB and the Illinois Supreme Court's majority decision are unsupported by judicial case authority or any expressed reasoned statutory interpretation.

At the outset, indeed, most worthy of note here is this Court's following language in *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964):

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined."

Likewise, the following language of this Court in *Luben v. Parrish*, 415 U.S. 709, 716 (1974) merits repetition:

> "The interests involved are not merely those of parties or individual candidates; the voters can assert their preference only through candidates or parties or both and it is this broad interest that must be weighed in the balance. The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters.
>
> 'The right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot. Williams v. Rhodes, 393 U.S. 23, 31 (1968).' "



This court expressed its affirmance of the inestimable value of the right to vote in *Reynolds v. Sims*, 377 U.S. 533, 555 (1964), thus:

> "The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

In *Moore v. Ogilvie*, 394 U.S. 814 (1969), yet another Chicago Election case in which ballot access was again denied, the procedure and issue were strikingly similar to those in the case at bar. In *Moore* the Illinois Election Code required the nominating petitions for independent candidates for the office of election of President and Vice President of the United States to contain 25,000 signatures of Illinois voters, including 200 signatures from at least 50 of the state's 102 counties. The independent candidates' nominating petitions did not contain the signatures of 200 voters from 50 counties. Because of this deficiency the Illinois Election Board refused to certify the independent candidates to the county clerks for the November 1968 election. The Board unsuccessfully urged before this Court in *Moore*, as the objectors in the instant case likewise unsuccessfully urged before this Court, that review by this Court was moot because the November election had been held. Because the controversy was "capable of

repetition, yet evading review," this Court in *Moore* rejected the moot argument, and held:

> "The use of nominating petitions by independents to obtain a place on the Illinois ballot is an integral part of her elective system. [citation] All procedures used by a State as an integral part of the election process must pass muster against the charges of discrimination or of abridgement of the right to vote. [citation]
>
> * * *
>
> It is no answer to the argument under the Equal Protection clause that this law was designed to require state-wide support for launching a new political party rather than support from a few localities. This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights. The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.
>
> . . . This law thus discriminates against the residents of the populous counties of the State in favor of rural sections. It, therefore, lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment," 394 U.S. 814, 818-819.

The majority Illinois Supreme Court and the CCOEB's interpretation that section 10-2 required the HWP nominating petitions to contain 25,000 suburban Cook County voters' signatures for suburban Cook County Board Commissioners, and an additional 25,000 Chicago voters' signatures for Chicago Cook County



Board Commissioners required the HWP to obtain a minimum of 50,000 voters' signatures to obtain access to the Cook County ballot, twice the number of signatures required for access to the State ballot. The CCOEB (and also the four majority Illinois Supreme Court Justices) concluded that under Section 10-2, "For this [November 6, 1990] election the 25,000 figure is less and is thus applicable," and therefore 25,000 voters' signatures were required for each political subdivision. (Footnote 17 of the CCOEB decision, HWP No. 90-1126 App. D. p. 39).

Section 10-2 required that the HWP nominating petitions "contain a complete list of candidates of such party for all offices to be held in the State, or such district and political subdivision as the case may be, at the next ensuing election then to be held . . . ", the constitutional validity of which is indeed questionable but which need not be here decided. Suburban and Chicago County Board Commissioners were offices to be filed in the next Cook County ensuing November 6th election and Section 10-2 therefore required these offices to be included within the HWP nominating petitions.

The CCOEB found that the HWP nominating petitions for Cook County Sheriff, State's Attorney, Treasurer, Assessor, Cook County Board President, Chicago Cook County Board Commissioners, Clerk, Board of Tax Appeal Commissioners and Superintendent of Education contained 44,000 Chicago/Cook County voters' signatures and concluded that the HWP candidates for these county offices were validly on the November 6, 1990 Cook County ballot. The CCOEB found that the HWP nominating petitions for suburban Cook County Board Commissioners contained only 7,800 suburban Cook

County voters' signatures and were therefore insufficient and ordered the HWP suburban Cook County Board candidates removed from the November 6th ballot. The four majority Illinois Supreme Court Justices agreed and affirmed that 25,000 suburban Cook County voters' signatures were required for the HWP suburban Cook County Board Commissioners' nominating petitions, but ordered, that because the HWP nominating petitions did not contain the required full slate, the HWP and all its candidates removed from the November 6th ballot.

As previously noted, Justice Ryan's dissent concluded that the total signatures required was only 25,000. Justice Miller's dissent, in which Justice Ryan and Moran joined, likewise concluded:

> "The majority's result [requiring 25,000 suburban and an additional 25,000 Chicago voters' signatures] seemingly conflicts with the Supreme Court's decision in *Illinois State Board of Elections v. Socialist Workers* Party, (1979), 440 U.S. 173, which invalidated, on constitutional grounds, an earlier provision in Section 10-2 that effectively required a new party to present more signatures to run a candidate in the City of Chicago than state-wide. The majority's construction of the statute produces a similar disparity."

That the HWP nominating petitions for the county offices of Sheriff, Assessor, Superintendent of Schools, Treasurer, State's Attorney, Chicago/Cook County Board Commissioners and Board of Tax Appeal Commissioners contained the signatures of 44,000 Chicago/Cook County voters and the HWP nominating petitions for suburban Cook County Board Commissioners contained 7,800 suburban Cook County voters' signatures overwhelmingly



established the seriousness of the HWP and its candidates and that these signatures were clearly a manifest preliminary showing of a "significant modicum of support" for the HWP and its candidates went unchallenged by the objectors, the CCOEB and the four majority Illinois Supreme Justices. *Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *Luben v. Panish*, 415 U.S. 709, 715 (1974).

In *Illinois Election Board v. Socialist Workers Party*, 440 U.S. 173 (1979), Section 10-2 required, as in the case at bar, the nominating petition of a new political party to contain the signatures of 25,000 Illinois voters in order to appear on the state-wide election ballot. However, the minimum signature requirement under Section 10-2 for a new political party's nominating petitions for offices of political subdivisions of the slate was 5% of the number of persons who voted at the previous election for offices of the subdivisions. Application of these provisions of Section 10-2 created the absurd result that the nominating petitions of a new political party candidate for a Chicago elective office required more Chicago voters' signatures than state voters' signatures on the nominating petitions of a new political party candidate for state office. The question therefore before this Court was "whether this discrepancy violated the Equal Protection Clause of the Fourteenth Amendment." This Court noted that the equal protection claim was premised on the insidious discrimination between new parties and their candidates seeking access to the state election ballot and new parties and their candidates seeking access to the Chicago election ballot. The case at bar is literally identical. This Court reiterated in *Socialist Workers Party* that:

"Restriction on access to [or denial of] the ballot burdens two distinct and fundamental rights, 'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively: [citation] *The freedom to associate as a political party, a right we have recognized as fundamental, [citation] has diminished practical value if the party can be kept off the ballot.* Access restrictions [or denial] also implicate the right to vote because absent recourse to referendum, 'voters can assert their preferences only through candidates or parties or both: [citation] by limiting the choices available to voters, the State impairs the voters' ability to express their political preferences. And for reasons too self-evident to warrant amplification here, we have often reiterated that *voting is of the most fundamental significance under our constitutional structure.* [citation]" 440 U.S. 173, 184 (Italics ours).

This Court concluded in *Socialist Workers Party* that:

> "The signature requirements for independent candidates and new political parties seeking offices in Chicago are plainly not the least restrictive means of protecting the State's objectives. The Illinois Legislature has determined that its interest in avoiding overloaded ballots in state-wide elections is served by the 25,000 signature requirement. Yet appellant has advanced no reason, much less a compelling one, why the State needs a more stringent requirement for Chicago . . .
>
> *[We] Therefore hold that the Illinois Election Code is unconstitutional insofar as it requires independent candidates and new political parties to obtain more than 25,000 signatures in Chicago."* (Italics ours) 440 U.S. 173, 186-187.



Likewise, in the case at bar, Section 10-2 violates Fourteenth Amendment Constitutional equal protection and Sec. 10-2 is therefore also unconstitutional insofar as it required the new political HWP candidates to obtain 50,000 voters' signatures in Cook County, 25,000 from the suburbs and 25,000 from Chicago for a county office, when the section only required 25,000 voters' signatures from anywhere within the state for a state-wide office.

The removal of the HWP and all its candidates from the November 6, 1990 general election ballot and the resultant disenfranchisement of its supporting voters is unprecedented and constitutionally repugnant. *McCarthy v. Briscoe*, 429 U.S. 1317 (1976). Indeed, we note the majority Illinois Supreme Court Order removing the HWP and all its candidates from the November 6, 1990 ballot is contrary and repugnant to even that Court's own decision in *Anderson v. Schneider*, 62 Ill. 2d 165 (1977).

In *Schneider*, the Electoral Board struck the nominating petition of an entire party and of its candidates from the ballot upon determining that one of the party's candidates was legally ineligible. The Electoral Board held that because the candidate was ineligible, the party failed to nominate the required entire slate of candidates and all the nominating petitions were therefore invalid. The Illinois Supreme Court ruled:

> "The sanction imposed by the Electoral Board and the Circuit Court was a harsh one. It affects not only the rights of the candidates but those of the voters. Nor have the defendants suggested any reason why such a sanction is necessary to protect the integrity of the electoral process.

It is now well recognized that the power of the state in determining voter qualifications and the conduct of elections must be exercised in a manner consistent with the Equal Protection and Due Process Clauses of the Fourteenth Amendment ~~and~~ with the interrelated right to associate for political purposes which is guaranteed by the First Amendment.

That the process of denying a candidate a place on the ballot because of the ineligibility of other candidates is constitutionally vulnerable is particularly manifest from *Lubin v. Panish,* 415 U.S. 709 (1974).

Certainly there is no interest necessary to preserve the integrity of the ballot justifying the removal of the party and all of its candidates from the ballot because of want of eligibility of a single candidate.

> *We hold Sec. 10-2 confers no authority for the removal of all of the candidates because one is unqualified."* 67 Ill. 2d 165, 171, 174, 175, 176. (Italics ours).

Why the Illinois Supreme Court majority Justices rejected and refused to follow, apply, discuss or even cite its own *Schneider* decision in the case at bar is unrevealed. It is also unprecedented.

Since *Schneider,* 1977, the Illinois legislature has not designated the sanctions or remedy to be imposed because of a political party's failure to completely comply with the full slate requirement or other requirements of the election code. To leave such unbridled remedies to the undefined, arbitrary and whimsical determinations of the numerous Illinois Electoral Boards, Illinois reviewing Circuit and Appellate Courts, and the Illinois Supreme Court violate fundamental constitutional due process and equal



protection. Parenthetically, we note that both the Democratic and Republican Parties regularly and frequently, throughout the State, in varying elections fail to slate candidates of such party for all offices to be filled in such elections.

The decisions requiring 50,000 Chicago and Cook County signatures and removing the HWP and its candidates from the ballot must be reversed.

## II.

## THE ORDER BARRING USE OF THE HWP NAME IS WITHOUT ANY EVIDENTIARY SUPPORT, IS CONTRARY TO THE UNCONTRADICTED EVIDENCE, VIOLATES THIS COURT'S RULINGS IN *SOCIALIST WORKERS PARTY* AND *MOORE* AND SAID ORDER IS THEREFORE VOID AND MUST BE REVERSED.

The Illinois Supreme Court majority order barring use by the HWP of its party name in expanding beyond the City of Chicago into suburban Cook County is completely contrary to the uncontradicted evidence, and additionally violates petitioners' first, fourteenth and fifteenth amendment constitutional rights.

Section 10-5 provides that a new political party petition for nominations:

> "[s]hall not bear the same name as, nor include the name of any established political party as defined in this Article. This prohibition does not preclude any established political party from making nominations in those cases in which it is authorized to do so."

The Objectors' third objection alleged (J.A. 14): "that the 'HWP' is an 'established political party' in the City of

Chicago * * * The [HWP] nomination papers at issue bear the name of an already 'established political party,' the 'HWP', and as such violates the Section 10-5 prohibition against a new political party bearing 'the same name' of an established political party."

During the evidentiary hearing on the objections before the CCOEB, the attorney for the HWP candidates answered this third objection of the objectors as follows, (Vol. 8, CCOEB Tr. pp. 7-12, 16-17, August 21, 1990).

> "Atty Thomas: Section 10-5 [Ch. 46, Ill. Rev. Stat.]. The Illinois Election Code, which basically says that the prohibition against the use of the same name is not prohibited if an established party authorizes the use of that name. And this is exactly what we have here in this situation. We have an established party in the city which seeks to expand its party to run at the county level, and what that established party has done is authorized the use of the name of the established city-wide party to establish it county-wide . . . There was no other provision within the election code that would allow the Harold Washington Party, which is a city-wide party to run a county-wide slate. So, therefore, this was the only means that we had in order to expand the party to the county."

Certainly the Illinois Democratic-Republican Party legislators cannot validly restrict a competing third party from expanding from the Chicago municipality into Cook County by merely failing to provide by legislation the process or procedure for such expansion by the third party.

The HWP attorney further advised and argued to the CCOEB, as, follows:



> "In the case of the HWP, in this situation, it is an established party at the city level which is now expanding to run candidates at the county level. THESE ARE THE SAME PEOPLE IN THE HWP WHO RAN A CITY-WIDE SLATE OF CANDIDATES FOR THE MAYOR OF THE CITY OF CHICAGO. THIS IS THE SAME PARTY THAT IS NOW EXPANDING TO RUN A SLATE OF CANDIDATES ON THE COUNTY-WIDE LEVEL. SO THERE IS NOT A CHANGE IN PEOPLE. THERE IS NOT A CHANGE IN NAME. IT IS, IN FACT, THE SAME PARTY . . . ' " (emphasis added.)

Thereupon, extensive colloquy occurred between the CCOEB members and the objectors' attorney (Vol. 8 CCOEB Tr. pp. 16-45, 8/21/90), during which at no time did the objectors' attorney contend, urge, assert, or argue the dual HWP name contention as a ground or basis for the objections to the HWP nominating petitions. Conversely, the Objectors, attorney then expressly rejected reliance on such grounds, in the following dialogue, (Vol. 8 CCOEB Tr. pp. 25-36, 8/21/90):

> "Objectors' Attorney: If we had those [HWP records] we could tell whether Mr. David Reed, who says in his affidavit that he was authorized to proceed, we'll then be able to find out if that's true. BUT I'LL BE CANDID WITH YOU, I DON'T WANT TO GO INTO THAT . . . (emphasis added.)
>
> CCOEB member Pucinski: Assuming that there were individuals who authorized this Harold Washington Party to expand and make nominations in the county, your argument is that authorization still wouldn't be effective . . .
>
> Objectors' Attorney: That's right. It wouldn't make any difference anyway. Wouldn't make any difference anyway."

Alderman Timothy Evans at the request of the CCOEB appeared before the CCOEB on August 24, 1990, at which time he was sworn and CCOEB member Pucinski interrogated him as follows: (Vol. 8 CCOEB Tr. pp. 4-5, 8/24/90)

> "CCOEB member Pucinski: Alderman Evans, * * * YOUR TESTIMONY WILL SETTLE ONE OF THE CENTRAL ISSUES IN THE WHOLE PROCESS, WHICH IS THE AUTHORIZATION OF THE HAROLD WASHINGTON PARTY BEFORE US TO USE THAT [HWP NAME] ON THEIR PETITIONS AS THE BASIS FOR THEIR PARTY AND THEIR CANDIDATES. SO, THE CENTRAL QUESTION IS, DO YOU AUTHORIZE THE USE OF THE NAME HAROLD WASHINGTON PARTY FOR THIS PURPOSE?
>
> Mr. Evans: YES, I DO AUTHORIZE THE USE OF THE NAME, HAROLD WASHINGTON PARTY, FOR EXPANSION INTO THE COUNTY.
>
> CCOEB member Mr. Kusper: So that, to try to sum this up, THE CITY OF CHICAGO HAROLD WASHINGTON PARTY DOES GIVE ITS PERMISSION AND AUTHORIZES THE USE OF THE HAROLD WASHINGTON PARTY NAME TO EXPAND IN SUBURBAN COOK?
>
> Mr. Evans: "YES, THAT IS CORRECT." (emphasis added.)

Predicated on these foregoing unrebutted representations and testimony, the CCOEB made the following factual findings and decision: HWP 90-1126, App. D, pp.33-36.

> "The Board was concerned that confusion would exist if the Chicago HWP was indeed, not the same as the new political party in the County, namely the HWP. A QUESTION THAT NEEDED TO BE RESOLVED WAS WHETHER THE NEW HWP WAS ONE AND THE SAME AS THE CHICAGO HWP INVOLVING THE SAME PEOPLE . . . Evans testified that he gave permission for use of the name prior to the County HWP petitions being circulated and he is the only person to testify in these regards . . . HERE THE EVIDENCE DEMONSTRATES THAT IT IS THE SAME HWP WHICH IS REACHING OUT TO EXPAND INTO NEW POLITICAL TERRITORY . . . Thus, the motion [of petitioners] to dismiss the objection that the name Harold Washington Party could not be used by the candidates is granted." (emphasis added).



In spite of this foregoing uncontested and uncontradicted testimony and colloquy, and the CCOEB's foregoing expressed findings the four majority Illinois Supreme Court Democratic Party Justices held, HWP 90-1126, App. B, p. 3:

> "This Court, by majority vote, holds that the petitioner's use of the Harold Washington Party name in their [nominating] Petitions did violate the provisions of Section 10-5. Accordingly the holding of the [CCOEB and] The Circuit Court on this question is hereby reversed as erroneous."

This Illinois Supreme Court majority ruling is (1), completely void of any evidentiary support in the record, and (2), diametrically repugnant to the uncontroverted evidence. The Illinois Supreme Court majority justices offer no rationale or reasoning for the ruling and no articulation whatsoever of any state interest to be protected by depriving an established political party the use of its name in expanding. As noted by Illinois Supreme

Court Justice Miller in his dissenting opinion, HWP 90-1126, App. B. pp. 10-14:

> "It is clear, then, that the statutory scheme contemplates that a political party might become an established entity in one district or political subdivision of the state but not in others . . . Because the Harold Washington Party is an established entity only in the City of Chicago, Article X [of the Illinois Election Code] does not, by its literal terms, prohibit the present candidates from running for county offices under the same party name.
>
> The purpose of the statutory limitation on the names that may be used by a political party are to prevent a new party from gaining ballot access by unfairly piggy backing on the successes of an established party and to avoid confusion. It is clear in the present case that the purpose of the legislation would not be undermined by allowing the county candidates to run under the Harold Washington Party name. Thus, after today's decision, it is not clear how a new party may go about expanding from one district to another."

There is no state interest nor any reason that justifies the sections convoluted interpretation by the Illinois Supreme Court majority justices that in effect makes impracticable, if not impossible, any alternative to the major parties. See, *Storer v. Brown*, 415 U.S. 724, 746 (1974). "The right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot." *William v. Rhodes*, 393 U.S. 23, 31 (1968). In *Socialist Workers Party* this Court held that there must be a compelling reason to justify the imposition of such burdens



on political parties, as in the instant case. A constitutionally permissible justification must be established to warrant the oppressive ballot status prerequisite in the case at bar, but no such justification exists. By denying the use of its party name in expanding from a city municipal party to a county-wide party, the Illinois Supreme Court majority justices impermissibly restricted the availability of political opportunity to the HWP, its candidates and the party's voters and supporters. The Illinois Supreme Court's majority decision refusing to allow the HWP to use its name for geographical expansion purposes cannot constitutionally stand. Such refusal is clearly violative of and repugnant to the 1st Amendment Constitutional right of political association, the 14th Amendment Constitutional rights to due process and the equal protection of the law, and the 15th Amendment Constitutional right to the franchise. The decision must therefore be reversed.

## CONCLUSION

The decisions of the CCOEB and the four majority Illinois Supreme Court Justices construing Section 10-2, Chapter 46, Ill. Rev. Stat. 1989, The Illinois Election Code, as requiring that the HWP nominating petitions for suburban Cook County Board Commissioners contain 25,000 suburban Cook County voters' signatures are erroneous and we pray reversal of said decision. Likewise, the decision of the CCOEB removing the HWP candidates for suburban Cook County Board Commissioner, and the decision of the four majority Illinois Supreme Court Justices removing the HWP and all its candidates for all the

Cook County offices from the November 6, 1990 ballot on the ground that the HWP nominating petitions for suburban Cook County Board Commissioners did not contain 25,000 suburban Cook County voters' signatures, and that the HWP nominating petitions therefore did not contain a full slate, are erroneous and we also pray reversal of these decisions.

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No. 90-1126

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In The

# Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, et al.,

*Petitioners,*

v.

DOROTHY REED, et al.,

*Respondents.*

On Writ Of Certiorari To The Supreme Court Of Illinois

## BRIEF OF RESPONDENTS COOK COUNTY OFFICERS ELECTORAL BOARD, et al.

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BEST AVAILABLE COPY

## QUESTION PRESENTED

1. Does a requirement that a new party candidate running in a jurisdiction with over 1,200,000 registered voters obtain 25,000 signatures on his nominating petitions unconstitutionally burden the right to ballot access as guaranteed by the First and Fourteenth Amendments to the United States Constitution?

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No. 90-1126

In The

# Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, et al.,

*Petitioners,*

v.

DOROTHY REED, et al.,

*Respondents.*

On Writ Of Certiorari To The Supreme Court Of Illinois

## BRIEF OF RESPONDENTS COOK COUNTY OFFICERS ELECTORAL BOARD, et al.

## INTRODUCTORY STATEMENT

This brief is submitted by the Cook County Officers Electoral Board and its members, David D. Orr, Jack O'Malley and Aurelia Pucinski (collectively the "Board"), as respondents in No. 90-1126. In large part, the Board supports the position of petitioners Barbara J. Norman, et al., (the "Harold Washington Party candidates") in No. 90-1126, for the reasons set forth in the Board's brief as petitioners in No. 90-1435.

This brief, however, presents the Board's response to the HWP's arguments on the one issue on which they

disagree: the exclusion of the HWP candidates for suburban Cook County commissioner.[1] This brief analyzes the suburban candidate issue under the assumption that the "complete slate" requirement is unconstitutional.

## STATEMENT OF THE CASE

The Board adopts the Statement of the Case presented in its brief in No. 90-1435.

## SUMMARY OF ARGUMENT

The Board agrees with the HWP candidates that the "complete slate" requirement, as interpreted by the Illinois Supreme Court, is constitutionally infirm. However, the Board disqualified the HWP suburban candidates simply because they failed to submit the requisite 25,000 suburban signatures.

[1] The brief of *amicus curiae* American Civil Liberties Union incorrectly asserts that the HWP no longer challenges the exclusion of the suburban candidates. Bf. of *amicus* ACLU at 10, n.8. However, the Harold Washington Party specifically argues that the Board (and the reviewing courts) improperly disqualified the HWP suburban Cook County commissioner candidates for failure to file a sufficient number of signatures. The record indicates that these particular candidates were disqualified on the independent ground that the 7,800 signatures submitted by those candidates was less than the 25,000 required by Illinois statute. See HWP Bf. at 9, 11, 13, 22, 26 and 27; Pet. Cert. in No. 90-1435 at 45a – 47a.



Political parties nominating candidates running for numerous offices in different jurisdictions may indeed have to present an aggregate number of signatures in excess of 25,000. However, Illinois law, as interpreted by the Board and affirmed by the Illinois Supreme Court, requires no individual new party candidate for office in a single jurisdiction to obtain more than 25,000 signatures. Thus, the 25,000 signature requirement, if viewed merely as a "cap", does not offend the constitutional rights at issue in *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 99 S.Ct. 983, 50 L.Ed.2d 230 (1979).

In considering this challenge to a state signature requirement, this Court must look to the totality of political circumstances to assess the character and magnitude of the burden the law places on the candidates and the state interests it advances. The record is devoid of evidence that the 25,000 requirement, considered alone, is either insurmountable or otherwise constitutionally suspect.

Illinois' flat signature requirement of 25,000 for new party candidates only applies in the vast Cook County jurisdictions containing millions of eligible voters. This 25,000 minimum compares favorably to similar requirements already approved by this Court. The mere 7,800 suburban signatures submitted by the HWP for its suburban candidates were neither sufficient to meet the statutory minimum nor were they sufficient to demonstrate a "modicum of support" in the community warranting ballot placement. Pet. Cert. in No. 90-1435 at 47a.

The HWP cannot sustain its burden of showing that its candidates for suburban Cook County commissioner

were constitutionally or statutorily entitled to a place on the November, 1990 ballot.

## ARGUMENT

### INTRODUCTION

Twenty-six persons ran as candidates of the Harold Washington Party for nine different offices in three separate voting jurisdictions. J.A. 4, 5. These candidates ran for all countywide offices and for the 17 positions on the Cook County Board of Commissioners: 10 elected from Chicago only and 7 from the suburbs.

Illinois law required these candidates to obtain signatures of voters within their voting jurisdictions in support of their candidacy. Ill.Ann.Stat. ch. 46, ¶ 10-1 *et seq.* (Smith-Hurd 1991 Supp.) The signed petitions presented by these candidates were of two distinct styles, which in turn included two overlapping sets of candidates: a "city/county" slate and a "suburban/county" slate. J.A. 4, 5. Voters signing these petitions requested both that county commissioner candidates for the voter's county board district (city or suburban district, as appropriate) and the entire countywide slate be placed on the ballot.

It is undisputed that the party presented only about 7,800 signatures for the suburban candidates. Pet. Cert. in No. 90-1435 at 46a. These signatures were all presented as part of the "suburban/county" slate. R. Vol. 2. Since the 7,800 total was considerably less than the 25,000 required



by statute[2], the Board sustained the objections to the suburban candidacies. Pet. Cert. in No. 90-1435 at 48a. The disqualification of these candidates was eventually upheld by the Illinois Supreme Court on other grounds. Pet. Cert. in No. 90-1435 at 2a.

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[2] Throughout this litigation, the parties have often asserted that 25,000 signatures are required for new parties running for statewide office, and that the statewide limit of 25,000 acts as a cap on the number needed for countywide candidates.

The statutory formula is actually a bit more complicated: new party candidates running for statewide office must obtain the lesser of (a) 1% of the number of voters who voted at the last statewide general election [which is always the general election held in November of the last even numbered year] or (b) 25,000. Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.). However, the statewide voter turnout at November elections in even-numbered years has consistently exceeded 2,500,000 since at least 1960. Official Vote Cast at the General Election, November, 1990, Illinois State Board of Elections. Thus, the lesser figure of the two is always 25,000.

The number of signatures for new party candidates running in a county or a district thereof is the lesser of (a) 5% of the number of voters who voted at the last election for county offices [which is also the general election held in November of the last even-numbered year] or (b) the number of signatures required of new statewide parties which desired to run at the last preceding statewide general election [which would in turn have been based on the turnout at the November general election held four years earlier]. Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.). Alternative (b), as shown above, is always 25,000.

## A. THE CONSTITUTIONAL ISSUES GOVERNING THE PARTY'S CHALLENGE TO THE NUMERICAL SIGNATURE REQUIREMENT FOR SUBURBAN CANDIDATES ARE DISTINCT FROM THOSE GOVERNING THE "COMPLETE SLATE" REQUIREMENT.

The Board generally agrees with the HWP that the "complete slate" and "same name" requirements, as interpreted by the Illinois Supreme Court, impermissibly infringed on the candidates' constitutional rights. See. Bf. of Board in No. 90-1435. In effect, the Illinois "complete slate" statute requires a candidate running for one office to submit the signatures necessary for ballot access for every office in that jurisdiction. In practice, this required the individual HWP candidates running for offices for which only 25,000 signatures were needed to actually submit the two separate groups of 25,000 required of the party ticket in each of the two Cook County board districts, totalling 50,000 signatures.

Because such piggy-backing resulted in the individual candidates needing more signatures than would statewide candidates, and thus run afoul of the doctrine set forth in *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 99 S.Ct. 983, 50 L.Ed.2d 230 (1979), the Electoral Board interpreted the "complete slate" requirement broadly so as not to disqualify the entire party ticket because one portion of that ticket itself did not have sufficient signatures. Thus, the Board did not disqualify the suburban candidates because of the inadequacies of their running mates. However, the suburban candidates' failure to submit the statutory minimum number of signatures for their individual candidacies left



the Board no alternative but to disqualify them, and only them, for that reason.

*Socialist Workers* stands for the general proposition that no candidate running in a smaller jurisdiction need submit a greater number of signatures than those required of similar candidates running in a larger jurisdiction. It does not require precise mathematical proportionality of signature requirements nor does it prohibit a State from adopting a "cap" which no signature requirement may exceed. *See, e.g., Bowe v. Board of Election Commissioners*, 614 F.2d 1147, 1150 (7th Cir. 1980); *Fuller v. Kusper*, 141 Ill.App.3d 1074, 491 N.E.2d 87 (1986).

The suburban candidates needed no more signatures than those which would have been required of any other new candidate running in any jurisdiction. Thus, this case does not present an illogical statutory anomaly such as that struck down in *Socialist Workers*.

## B. ILLINOIS FLAT 25,000 SIGNATURE REQUIREMENT FOR NEW PARTY CANDIDATES RUNNING IN LARGE JURISDICTIONS IS FAR MORE PERMISSIVE THAN SIMILAR REQUIREMENTS UPHELD BY THIS COURT.

The 25,000 signature requirement for suburban Cook County commissioner candidates is, in large part, a result of the decision of this Court in *Illinois State Board of Elections v. Socialist Workers Party*, in which this Court found that Illinois' requirement that a candidate running only in Chicago must obtain more signatures than a statewide candidate violated the constitutional guarantee of equal protection. The legislature subsequently amended

section 10-2 of the Election Code[3] to provide a uniform 25,000 signature "cap".

Most third-party candidates for county office in Illinois simply need to submit signatures numbering at least 5% of the vote cast in the applicable jurisdiction at the last election at which county officers were elected.[4] This formula results in a numerical signature requirement far less than 25,000 signatures in all but the largest voting jurisdictions in Cook County.[5] In the three large Cook County jurisdictions, use of the percentage formula results in a signature requirement somewhat higher than the 25,000 statewide cap.[6]

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[3] Ill.Ann.Stat. ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.)

[4] Ill.Ann.Stat. (1989) ch. 46, ¶ 10-2 (Smith-Hurd 1991 Supp.). Under the Illinois consolidated election calendar, the base year used to compute signature requirements for county elections is always the general election held in November two years earlier. Ill.Ann.Stat. ch. 46, ¶ 2A-1.1 (Smith-Hurd 1991 Supp.). Thus, the base year for new party signature requirements for the November, 1990 election was the November, 1988 election.

[5] In Illinois' second most-populous county, DuPage County, third-party countywide candidates for the 1990 election need only have submitted 15,991 signatures. Official Vote Cast at the General Election, November, 1988, Illinois State Board of Elections.

[6] If the pre-*Socialist Workers* uncapped percentage formula were used for Cook County candidates for the 1990 election, the candidates for countywide office would have needed 104,799 signatures, the Chicago-only candidates, 55,704, and suburban-only candidates, 49,095. Official Vote Cast at the General Election, November, 1988, Illinois State Board of Elections.



This Court has considered whether numerical signature requirements are so onerous as to violate the candidates' constitutional rights. In *Jenness v. Fortson*, 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971), this Court upheld a signature requirement of 5% of the total registered electorate. Here, in contrast, Illinois merely requires a maximum of 5% of the votes cast at the last county election. By taking advantage of the 25,000 "cap", the HWP candidates could obtain ballot access with support from as little as 2.1% of the total registered electorate.[7]

The Chicago and suburban county board districts are discrete and separate. Because each of these two districts is sufficiently large to invoke the 25,000 cap, a party wishing to run candidates for all 17 commissionerships must indeed submit a total of 50,000 signatures. However, by using a "slate petition", a combination of these signatures may also be used to support the countywide ticket.

This signature requirement, however, does not share the flaws which doomed the statute considered in *Socialist Workers*. Instead of illogically requiring candidates who run in a smaller area to obtain more signatures than those running in a larger area, the Illinois statutory scheme now establishes a hierarchy of increasing percentage-based signature requirements for new party county

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[7] In 1990, approximately 1,200,000 persons were registered to voters in suburban Cook County. Under the five percent standard approved in *Jenness*, new party candidates would need 60,000 signatures. The total vote cast at the November, 1990 General Election in suburban Cook County was 654,229. Official Canvass of Results of the November, 1990, General Election, Cook County Canvassing Board.

candidates, which peaks at a cap of 25,000 signatures. This formula does not affect similarly situated candidates in an illogical fashion nor does it unduly burden candidates. The uniform cap eases the administration of election laws and recognizes that a percentage-based formula often resulted in colossal requirements in populous voting jurisdictions. These requirements can be so high that they exceed the level which can be easily obtained by a new party, even one which could draw upon the vast population base of Cook County.

The Court of Appeals for the Eighth Circuit has upheld a "flat figure" requirement similar to Illinois'. In *McLain v. Meier*, 851 F.2d 1045 (8th Cir. 1988), the court upheld a 7,000 signature requirement for North Dakota statewide offices, noting that the State had "important interests in protecting the integrity of [its] political processes from frivolous or fraudulent candidacies, in ensuring that [its] election processes are efficient, in avoiding voter confusion and caused by an overcrowded ballot, and in avoiding the expense and burden of run-off elections." *Id.* at 851 F.2d 1050, *quoting Clements v. Fashing*, 457 U.S. 957, 965, 102 S.Ct. 2836, 2844-45, 73 L.Ed.2d 508 (1982).[8]

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[8] The signature requirement upheld in *McCain* compares favorably to the Illinois requirement for suburban commissioners:

| Jurisdiction Population | Requirement | 1980 Population | Requirement as % of Total |
|---|---|---|---|
| North Dakota | 7,000 | 652,717 | 1.07% |
| Suburban Cook County | 25,000 | 2,248,129 | 1.11% |

*See also Hall v. Simcox*, 766 F.2d 1171, 1176 (7th Cir. 1985) "Thirty-five thousand signatures in a state of millions of registered voters are not a lot to get[.]"



In effect, Illinois has said that any candidate who can garner the support of 25,000 of its citizens can obtain ballot placement in his voting jurisdiction, no matter how large that jurisdiction may be. This Court need not disturb the sound legislative judgment evidenced by this simple requirement.

### C. THE RECORD DOES NOT DEMONSTRATE THAT ILLINOIS' NUMERICAL SIGNATURE REQUIREMENT IS UNDULY BURDENSOME.

In its brief, the HWP argues that its 7,800 suburban signatures "overwhelmingly established" the party's seriousness in the suburban area and was sufficient to demonstrate a "modicum of support" in that jurisdiction. HWP Bf. at 26-27. HWP also claims that the Board did not challenge the HWP's assertion. However, the Board specifically noted:

> The Board finds that the 25,000 signature requirement for suburban candidates is appropriate, since there are over 1,000,000 voters in suburban Cook County, and since the HWP candidates were not tested in a primary election. [footnote omitted.] The fact that 44,000 signatures were collected in Chicago, which only has slightly more voters than suburban Cook, supports the Board's position that the 25,000 suburban requirement would be attainable if the HWP had a modicum of support in that jurisdiction, a fact which the HWP has not shown. [footnote: Further, the Electoral Board has no statutory authority to alter or vary from the minimum signature requirement as set forth in the Election Code. The question of what is a minimum showing of support (if 25,000 is too much) reposes in a court of competent jurisdiction.]

Pet. Cert. in No. 90-1435 at 47a. The record is devoid of evidence even hinting that the 25,000 signature requirement for suburban candidates was unduly burdensome. The HWP's argument on the point is limited to a vague assertion that 25,000 signatures should be sufficient to place all the party's candidates on the ballot no matter how many candidates it fielded or in how many jurisdictions it chose to run them. In its haste to dismantle this reasonable statutory requirement, HWP does not suggest, for instance, how signatures from one jurisdiction could be used to demonstrate support for candidates running in other jurisdictions. Illinois, of course, may demand that the HWP show support in the precise jurisdictions in which the candidates are running. In essence, the HWP is asking to transfer its Chicago signatures (whose signers did not petition to nominate the suburban candidates) to support the other portions of the ticket. See Pet. Cert. in No. 90-1435 at 46a.

The HWP requests that this Court rewrite the Illinois Election Code and legislate new signature requirements for certain offices. On this record, such a task is impossible. Candidates mounting a serious attack to a statutory signature requirement as unduly burdensome must develop a strong factual record demonstrating the frustration experienced by candidates attempting to meet the standard. *Storer v. Brown*, 415 U.S. 724, 740 (1976); *Berglund v. Harris*, 767 F.2d 1551, 1554 (11th Cir. 1985). In *Munro v. Socialist Workers*, 479 U.S. 189, 107 S.Ct. 533, 93 L.Ed.2d 499 (1986), this Court recognized that unfocused attacks such as HWP's lead to "endless court battles" over whether the States' requirements actually are sufficient to justify their ends. *Id.* 479 U.S. at 195, 107 S.Ct. at



537. The *Munro* court further held that the State's choice of a signature requirement need only be "reasonable and * * * not impinge on constitutionally-protected rights". *Id.*

The support already demonstrated by the HWP in the suburban area is hardly awe-inspiring. Assuming every signature on the suburban sheets is valid, the 7,800 submitted is only about 0.65% of the total electorate and 0.79% of the suburban vote cast at the 1988 county election.

Additionally, the party's countywide candidates did not demonstrate suburban support at the November, 1990 election. Only two of the party's nine candidates even

surpassed the low 5% threshold in the suburbs which Illinois requires to obtain "established party" status.[9]

Assuming, as HWP asserts, that it largely draws its support from disenchanted Democrats, the results in the suburban commissioner race also demonstrate that an HWP presence on the ballot would not have affected the results. In the heavily Republican Cook County suburbs, six Republicans and one Democrat won for county commissioner. The lone successful Democrat was Richard J. Phelan, the party's candidate for President of the County Board. Mr. Phelan finished fourth, in the middle of the pack of Republicans, a full 41,573 votes ahead of his

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[9] The results of the November, 1990 Election in the suburbs for the HWP candidates were:

| Office | Total Vote | Percent of Total Vote |
|---|---|---|
| State's Attorney | 22,733 | 3.6% |
| Clerk | 20,789 | 3.4% |
| Treasurer | 28,068 | 4.7% |
| Sheriff | 47,058 | 7.5% |
| Assessor | 23,248 | 3.8% |
| Supt. of Educational Service Region | 38,362 | 6.7% |
| Board of Appeals (two candidates) | 23,288 | |
| | 24,567 | 4.3% combined |
| President | 29,854 | 4.8% |

Of the 654,229 ballots cast, 86,522 were "straight party" Democratic votes, 64,501 were straight Republican and only 4,989 were straight Harold Washington party votes. Official Canvass of Returns, Cook County Canvassing Board, November, 1990 General Election.



nearest Democratic running-mate.[10] This margin is significantly greater than the total suburban vote achieved by all but one the HWP countywide candidates.

The HWP petitioned this Court for a stay of the Illinois Supreme Court order to permit the suburban candidates to run in November, 1990 election. This Court granted that petition, but to the limited extent that the decision of the Electoral Board was reinstated. J.A. 118. As the Board's decision excluded the suburban candidates, they were not included on the ballot prepared in response to the stay order. This Court correctly reinstated the HWP candidates who did demonstrate support in their jurisdictions: the countywide and Chicago – only candidates.

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[10] The complete results of the race for suburban Cook County commissioner were:

| | | |
|---|---|---|
| Mary M. McDonald (R) | 326,865 | 8.7% |
| Aldo A. DeAngelis (R) | 314,466 | 8.4% |
| Carl R. Hansen (R) | 313,917 | 8.4% |
| Richard J. Phelan (D) | 298,067 | 8.0% |
| Richard A. Siebel (R) | 294,886 | 7.9% |
| Herbert Schumann (R) | 273,368 | 7.3% |
| Allan Carr (R) | 268,823 | 7.2% |
| Patricia McLaughlin (D) | 256,494 | 6.8% |
| Angelo Saviano (R) | 252,373 | 6.7% |
| Sheila Schultz (D) | 246,986 | 6.6% |
| Pat Capuzzi (D) | 233,521 | 6.2% |
| Thomas O'Donnell (D) | 225,171 | 6.0% |
| Erwin Kozicki (D) | 210,196 | 5.6% |
| Edward Reinfranck (D) | 209,290 | 5.6% |

Official Canvass of Returns, Cook County Canvassing Board, November, 1990 General Election.

## CONCLUSION

The judgment of the Supreme Court of Illinois should be affirmed in part and reversed in part by fully reinstating the decision of the Cook County Officers Electoral Board.

Respectfully submitted,

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In The

# Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, JANICE H. ROBINSON, DONALD PAMON, HELIDA R. RICHARDSON, TOMMY BREWER, CHARLES W. ALEXANDER, DOROTHY C. HOGAN, WILL LAWRENCE, KENNETH G. HOPKINS, R. EUGENE PINCHAM, ROBERT E. PINCHAM, JR., ROBERT E. BROOKS, PERCY V. COLEMAN, VIVIAN D. STEWART-TYLER, JAMES A. DEANS, DINO F. McNEAL, MARY KING CRISS, DAVID T. PERSONS, MELLO SAM H. CLORA, JUDY MARIE HAWTHORNES, CHESTER LeSURE, CELIA DUNCAN, DON C. PASSMORE, JR., and BOBBIE SMITH,

*Petitioners,*

vs.

DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, and DAVID BARRERA; STANLEY T. KUSPER, JR., AURELIA PUCINSKI and ERNESTO D. BORGES, constituting THE COOK COUNTY OFFICERS ELECTORAL BOARD; STANLEY T. KUSPER, individually and as CLERK OF COOK COUNTY ILLINOIS; ARNETTE HUBBARD, RAYMOND JAGIELSKI and MICHAEL HAMBLET, constituting the CHICAGO BOARD OF ELECTION COMMISSIONERS,

*Respondents.*

On Writ Of Certiorari
To The Supreme Court Of Illinois

## BRIEF OF RESPONDENTS DOROTHY REED, VALERIE A. SUTTON, PATTON L. FEICHTER, ERVIN S. RICKS, AND DAVID BARRERA ON THE MERITS

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## I. The Controversy is Moot.

There is no outstanding issue to be resolved and no form of remedy to be granted. There is no controversy. This case involves the eligibility of candidates in the November 6, 1990 general election for Cook County Board. The Supreme Court of Illinois denied access to the Harold Washington Party (HWP) because it used the name of an established party and because its petition did not contain the requisite 25,000 signatures from suburban Cook County in addition to 25,000 signatures from the City of Chicago. However, by order of the Court, entered October 25, 1990, the judgment of the Illinois Supreme Court was stayed and the HWP appeared on the November 1990 ballot and participated in the general election for Cook County Board. The HWP slate was resoundingly defeated in that election. The issue of whether the HWP party should have been authorized to appear on the ballot is moot.

Petitioners claim there is "great uncertainty on the manner in which new political party candidates obtain access of ballot." There is no uncertainty about how candidates may obtain access to the general ballot. The rules are clear. The statute provides three distinct methods by which a candidate may be placed upon the general election ballot. First, the candidate may run in the primary of an established political party and win a place on the ballot of the general election. Second, the candidate may run as an "independent" candidate by obtaining the requisite signatures from the general voting population of that district. Third, the candidate may run under a "new" political party as long as that party has obtained sufficient signatures to designate an "interest" in that party.

Each of these methods is reasonable, realistic, and feasible. If HWP had followed the Election Code procedures, it would have gained rightful access to the November ballot.

Petitioners also claim that controversies will continue to occur without a determination of this case. This is the first time that such a controversy has occurred in Cook County. The reason that a controversy did occur was that the HWP violated the Illinois Election Code. Such a controversy will not occur again if this Court adopts a policy which requires all election candidates to adhere to the election rules codified in the Illinois Election Code.

## II. The "Party Name" Issue

The judgment of the Illinois Supreme Court was based only upon state grounds. It did not involve any federal question, let alone a substantial federal question. Under these circumstances, the Court has regularly declined review. *See Uhler v. AFL-CIO*, 468 U.S. 1310, 1311 (1984); *Herb v. Pitcairn*, 324 U.S. 117, 125 (1945).

The Illinois Supreme Court ruled that petitioners violated the Illinois Election Code requirement that a petition for creation of a new political party "[s]hall not bear the same name as, nor include the name of any established political party as defined in this Article." 46 Ill. Rev. Stat. § 10-5. The purposes of § 10-5 are to avoid the perpetration of a fraud upon the electorate, to stem voter confusion, and to prevent splintered parties and unrestrained factionalism. *Stevenson v. State Board of Election*, 638 F. Supp. 547 (N.D. Ill.), *aff'd*, 794 F.2d 1176 (7th Cir. 1986); *Doty v. Representation For Every Person (R.E.P.)*



*Party*, 97 Ill.App.3d 316 (1st Dist. 1981); *Vasquez v. Municipal Officers Electoral Board*, 115 Ill.App.3d 1014 (3rd Dist. 1983); *Ballentine v. Bardwell*, 132 Ill.App.3d 1033 (1st Dist. 1985).

Timothy Evans' Harold Washington Party was and is an established political party in Chicago. It was and is different from R. Eugene Pincham's Harold Washington Party. By choosing the name of an established party, Mr. Pincham directly violated the statute. Mr. Pincham could have avoided the statutory bar by taking a different name for his party. He chose not to do so and thereby disqualified himself and his party.

The confusion and mischief of two Harold Washington Parties is obvious. Under present circumstances, the established city-wide "Tim Evans" Harold Washington Party and the new city-wide and county-wide "R. Eugene Pincham" Harold Washington Party are separate and distinct political entities, each of which is entitled to run candidates in all ensuing municipal elections for Chicago city officials. Two parties with separate sets of candidates running under the same name is simply antithetical to a free and informed electoral process.

Section 10-5 plays no favorites. It similarly prevents someone from forming another and new Republican Party or another and new Democratic Party and running as a republican or democrat. If Mr. Pincham is allowed to form his own Harold Washington Party and field a slate of candidates, then anyone can form their own Republican Party or Democratic Party and run as a republican and a democrat. This is obviously intolerable and, in fact,

anti-democratic. This is precisely the sort of confusion the statute was designed to prevent.

## III. The "Signature" Issue

The Illinois Election Code requires that, before a new political party may field a slate of candidates, it must file nominating petitions signed by at least 5% of the voters in each district in which it intends to run.

Pursuant to § 1-3 (14) of the Illinois Election Code, Cook County consists of two political districts: the City of Chicago and suburban Cook County. As applied to Cook County and Chicago, the Election Code essentially requires that the new political party must file nominating petitions with 25,000 city signatures and 25,000 suburban signatures. This requirement has been reviewed and found to be constitutional and reasonable. *Black v. Cook County Officers Electoral Board*, 750 F. Supp. 901 (N.D. Ill. 1990).

Petitioners obtained approximately 7,560 suburban signatures. They therefore failed to obtain the necessary 25,000 suburban signatures required by § 10-2.

Citing *Illinois State Board of Elections v. Socialist Worker's Party*, 440 U.S. 173 (1979), petitioners first contend that a new political party in Illinois need only obtain a total of 25,000 signatures from city or county voters.

Petitioner's legal reliance and analysis are wrong. *Socialist Worker's Party* does not support them. In that case, the Court ruled that, unless there was a compelling state interest, Illinois could not impose a more stringent signature requirement upon new political parties and independent candidates in Chicago than it imposed upon



new political parties and independent candidates seeking State-wide office.

In the instant case, the reason for the 25,000 signature requirement *per* district is both clear and reasonable. A 25,000 signature requirement for each district guarantees that, before it is placed on the ballot, the new party must have some support from the voters of that district.

In 1986 (the last election at which Cook County Commissioners were elected), 1,476,370 people voted. 841,085 city ballots and 635,285 suburban ballots were cast. Given this substantial number of votes in both the city and the suburbs, the 25,000 signature requirement is a very modest one. Indeed, petitioners' approximately 44,000 city signatures plainly demonstrate that the 25,000 signature requirement for a district the size of Chicago or suburban Cook County can easily be attained with any sort of political support.

That fact was recognized by the Illinois General Assembly when, following the decision in *Socialist Workers' Party*, the Legislature amended § 10-2 of the Election Code which added the following sentence to paragraph 4 of § 10-2:[1]

> However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for State-wide general election, such State-wide petition signature requirement shall be the minimum for such

---

[1] Section 10-2 provides that the nominating petition of a new State-wide political party must be signed "by 1% of the number of voters who voted at the last preceding State-wide general election or 25,000 qualified voters, whichever is less."

> district or political subdivision new political party petition.

Public Act No. 81-926, effective September 11, 1979.

The General Assembly, however, did not amend that portion of § 10-2 which requires the double 25,000 signature requirements at issue in this case. Demanding minimum demonstration of voter support protects the integrity of the electoral process. The Court has found this to be a compelling state interest. *American Party of Texas v. White*, 415 U.S. 767, 783, n. 14 (1974). As the court explained in *Stevenson v. State Board of Elections*, 638 F.Supp. 547, 553-554 (N.D. Ill.) *aff'd*, 794 F.2d 1176 (7th Cir. 1986):

> One such interest is to prevent splintered parties and unrestrained factionalism. Id. at 735, 94 S.Ct. at 1281. *Anderson v. Clebrezze*, 460 U.S. at 803, 103 S.Ct. at 1577. As has been stated before, the Supreme Court in *Storer* recognized as legitimate the state's goal of discouraging independent candidacies prompted by short-term political goals, pique, or personal quarrel. *Storer* at 735, 94 S.Ct. at 1281; *Anderson*, at 803, 103 S.Ct. at 1577. Splintered parties and unrestrained factionalism may do significant damage to the fabric of government. See the Federalist, No. 10 (Madison). There are further substantial state interests at stake: encouraging compromise and political stability; attempting to ensure that the election winner will represent a majority of the community; and providing the electorate with a ballot that will eliminate voter confusion. *Williams v. Rhodes*, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968); *Bullock v. Carter, supra*, at 145, 92 S.Ct. at 856.

The Supreme Court decisions in *Anderson supra; Storer, supra; Rosario, supra;* and *Jenness, supra*, all support the position taken herein. Accordingly, the interests of ballot integrity, political stability, and voter representation all reflect legitimate state interests to be advanced by statute.



Petitioners argue that Illinois may not insist upon any showing of support from both districts because to do so would exceed the State-wide minimum. The Seventh Circuit has twice rejected this argument. *See Bowe v. Board of Election Commissioners of City of Chicago*, 614 F.2d 1147 (7th Cir. 1980) and *Gjersten v. Board of Election Commissioners of City of Chicago*, 791 F.2d 472 (7th Cir. 1986). In *Bowe*, the Seventh Circuit stated:

> The plaintiffs apparently take the position that the *Socialist Worker's Party* case stands for the broad proposition that a state may never impose a higher signature requirement for an office of a smaller subdivision than the requirement imposed for any office of a larger subdivision. We cannot agree.

614 F.2d 1147, 1151

*Bowe* is also instructive for another reason. The requirement that a county-wide new political party must meet a 5% signature requirement in both the city and suburban districts is a proper legislative one to assure that the new party can show:

> a significant modicum of support. . . . Thus substantial minimum signature requirements serve compelling State interests, and the only question is whether the specific percentage chosen serves the State's compelling interests in a reasonable manner.

614 F.2d at 1151

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Section 10-2's double 25,000 signature requirement answers *Bowe's* "only question" in the affirmative. It simply requires that a new political party must show "a significant modicum of support" in Chicago and in suburban Cook County. This is reasonable and serves a compelling State interest. Section 10-2 comports with the *Socialist Worker's Party* case and its progeny and should be followed.

*Anderson v. Schneider*, 67 Ill.2d 165 (1977) was properly found by the lower courts to be inapposite. *Anderson* considered the Election Code requirement that a new political party petition must contain a "complete list of candidates." In *Anderson*, the question was whether the ineligibility of one candidate on a new party petition renders all candidates ineligible. *Anderson* held that, when a candidate was ineligible, the eligible candidates would not be punished and their petitions would be honored. In this case, all of the candidates were declared ineligible because they all failed to file the requisite number of signatures.

It is clear, therefore, that both the Supreme Court of Illinois and the United States District Court ruled properly in holding that the signature requirements were reasonable, served compelling state interests and were, therefore, constitutional.

## IV. Access to the Ballot

The First, Fourteenth, and Fifteenth Amendments to the Constitution mandate an electoral process which provides political "access" to all citizens. To provide access, a state has a special interest in creating a structuralized electoral process. The election rules as codified in the Illinois Election Code are intended to provide structure to



the election process and to ensure that access of candidates does not disrupt the electoral process.

The Election Code, as it now stands, does not violate constitutional principles because it allows access to political candidates and political parties. There is no ambiguity in the Illinois Election Code. The Code enumerates three specific and clear procedures which every political candidate and every political party shall follow before obtaining access to the general ballot.

The Constitution grants access to individuals seeking to become involved in the governmental process. The Constitution does not grant special treatment to political candidates or political parties who do not follow the rules. HWP sought nomination of Cook County Offices, but did not adhere to the required procedures, which has past constitutional muster. *See Black, supra*. HWP did not obtain the requisite number of signatures as mandated under the Election Code. HWP sought nomination under the name of an established and separate political party already existing in the City of Chicago in violation of the Election Code. Consequently, HWP was properly denied access to the general election ballot.

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No. 90-1126

In The

# Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, et al.,

*Petitioners,*

v.

DOROTHY REED, et al.,

*Respondents.*

On Writ Of Certiorari To The Supreme Court Of Illinois

## PETITIONERS' REPLY BRIEF

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## THE CONTROVERSIES ARE NOT MOOT

Respondents, Reed, Sutton, Feichter, Ricks and Barrera, alone, again fallaciously argue that the controversies raised and to be resolved herein are moot, after having initially and unsuccessfully relied on the same ground in opposition to the instant petition for a Writ of Certiorari. Respondents, Cook County Officers Electoral Board, its officers and members do not assert this contention. In Petitioners' reply brief to Respondents' brief in opposition to the petition for certiorari, Petitioners set forth why, and urged that the controversies presented herein were not moot. Petitioners perceived that Respondents' mootness argument was rejected when this Court granted the petition. Respondents here again rely on the mootness plea, and Petitioners here again repeat why the controversies presented herein are not moot. There yet remains a dire and desperate need for this Court to resolve these controversies in a published decision for future authority, direction and guidance, for the following reasons:

First: in a 26 page unpublished decision, the Cook County Officers Electoral Board (CCOEB) removed some, and placed other Harold Washington Party (HWP) candidates on the November 6, 1991 Cook County, Illinois general election ballot. On appeal, in an order entered October 12, 1990, the four Illinois Supreme Court Democratic Party Justices reversed the CCOEB decision and removed the HWP and all its candidates from said ballot. The three minority Illinois Supreme Court Republican Party Justices dissented in two written opinions.

The Illinois Supreme court's majority reversal order preliminarily states that the order

> "is entered by a vote of a majority of the court,
>
> WITH AN OPINION TO BE FILED AT A LATER DATE."

The reversal order additionally concludes that

> "AN OPINION WILL LATER BE FILED SETTING FORTH THE REASONS SUPPORTING THIS ORDER."

Each of the three Illinois Supreme Court dissenting Republican Party Justices joined in the two dissenting opinions, in one of which there is stated:

> "These two sections of the case, together support the conclusion that the petitions before this Court do not violate Section 10-5, a position which I WILL EXPLAIN IN DETAIL IN A DISSENT I WILL WRITE TO THE OPINION THE MAJORITY WILL FILE AT A LATER DATE." (emphasis added)

As and of this very moment, August 28, 1991, the Illinois Supreme Court majority has failed to render an opinion in this case. Should this Court dismiss the instant petition as improvidently granted because of mootness, as Respondents would urge, the Illinois Supreme Court majority Democratic Party Justices will then be at liberty to render an opinion reversing the CCOEB's decision in whatever language the majority chooses to use, without review thereof by this Honorable Court.

Second: The Illinois Supreme Court majority Justices reversed the CCOEB's decision and removed the HWP and its candidates from the ballot. This Honorable



Court's orders of October 23 and 25, 1990, however, did not reverse the Illinois Supreme Court majority order; rather, this Court merely stayed the Illinois Supreme Court majority reversal order and reinstated the CCOEB's decision "pending the timely filing and disposition of a petition for a Writ of Certiorari." Absent an opinion by this Court, an Illinois Supreme Court majority subsequent opinion, or its October 12, 1990 reversal order removing the HWP and its candidates from the November 6 ballot will be the final published order and authority on the issues and controversies presented herein, both of which will be contrary to this Honorable Court's October 23 and 25, 1990 orders, as well as this Honorable Court's decisions in *Illinois State Board of Election v. Socialist Party*, 440 U.S. 173 (1979); *Lubin v. Panish*, 415 U.S. 709 (1974); *Moore v. Ogilvie*, 394 U.S. 814 (1969), an unprecedented imbroglio.

A reason proffered for the Illinois Supreme Court majority's unusual neglect to render its majority opinion is that no majority opinion can now be written. Two of the four Illinois Supreme Court majority Democratic Party Justices, Justices Daniel Ward and John Stamos, who joined in the Court's October 12, 1990 reversal order, are no longer members of the Illinois Supreme Court. They retired from the Court on December 6, 1990, without having joined in or ratified a majority opinion. They have been replaced by Justices Michael A. Bilandic and Charles A. Freeman, neither of whom were members of the Court on October 12, 1990 when the Court's majority reversal order was entered. Under these circumstances, should this Honorable Court dismiss the instant proceedings because of mootness, or on any other ground, the

Illinois Supreme Court majority reversal order of October 12, 1990 will be the final published judicial authority on the instant issues and controversies for future guidance and direction, again, a most undesired and unprecedented dilemma.

Third: under the provisions of the Illinois Election Code, Ch. 46, Secs. 10-8 and 10-10.1, Ill. Rev. Statute, the nominee-candidates are the only parties who may appear before the CCOEB on the hearing of the objections to the nominating petitions to remove the nominee-candidates from the ballot, or before any appellate tribunal on the appeal of any CCOEB ruling. Because these election code provisions precluded the appearances or the participation of the HWP and/or the HWP voting supporters in the proceedings before the CCOEB, or on the appeal of the CCOEB decision before the reviewing Circuit Court of Cook County or the Illinois Supreme Court, in an attempt to protect their constitutional rights and interest, six (6) HWP voting supporters filed an action under 42 USC Sec. 1983 in the United States District Court for the Northern District of Illinois, the Honorable John Nordberg presiding, to enjoin the removal of the HWP and its nominee-candidates from the November 6, 1990 ballot, entitled *Timuel Black, et al. v. Cook County Officers Electoral Board, et al.*, 90 C 5529. On October 2, 1990, the District Court, in an opinion to be published, dismissed the HWP Plaintiffs' complaint on the ground that it lacked jurisdiction. However, after ruling that it lacked jurisdiction and that the complaint should be (and was) therefore dismissed, District Judge Nordberg ironically proceeded further and gratuitously decided "that the [25,000 Cook County suburban voters'] signature requirement [on nominating



petitions for suburban Cook County Board members] is not unconstitutional as it applies to the separate components which comprise Cook County."

This District Court decision is clearly erroneous, repugnant to and violative of this Court's decisions in *Illinois State Board of Election v. Socialist Workers' Party*, 440 U.S. 173 (1979); *Lubin v. Panish*, 415 U.S. 709 (1974); *Moore v. Ogilvie*, 394 U.S. 814 (1969). The District Court's laborious convolusions to distinguish these decisions were futile.

This District Court decision was rendered 10 days before the Illinois Supreme Court's October 12, 1990 majority and dissenting opinions, to be reviewed herein, and 23 days prior to this Court's October 25, 1990 order restoring the HWP and its candidates to the November 6, 1990 ballot. Additionally, this District Court's unprecedented decision is diametrically opposed to the dissents of the three dissenting Illinois Supreme Court Justices. This erroneous District Court decision will be a published authoritative decision on this issue should this Court dismiss the instant proceedings as moot. The HWP Plaintiffs appealed the District Court's decision and dismissal of their complaint to the United States Court of Appeals for the Seventh Circuit, Docket No. 90-3203, *Black, et al., Appellants v. CCOEB, Appellees, and Reed, et al., Intervening Appellees*. The Court of Appeals on January 18, 1991 ordered that the appeal be held in abeyance pending rendition of this Honorable Court's decision herein.

Fourth: the Chicago-Cook County Democratic Party power structure continues to deny the HWP equal treatment under the election laws, which necessitated the

HWP to file an action in the United States District Court for the Northern District of Illinois to compel the Chicago Election Board to appoint HWP election judges, as it had appointed Republican and Democratic Party election judges for the polling places in the April 2, 1991 Chicago mayoral election. This action was entitled, the *HWP, et al. vs. the Chicago Board of Election Commissioners, et al.*, No. 91 C 1727, the Honorable John Nordberg again presiding. Even though its was unchallenged that the HWP was the second largest Chicago political party and that city Republican Party election judges had been appointed for the much smaller Republican Party, District Judge Nordberg again denied relief to the HWP. An appeal from this denial is now pending in the United States Court of Appeals for the Seventh Circuit, Docket No. 91-1686, Appellants' brief due on or before September 2, 1991, Appellees' brief due on or before October 2, 1991 and Appellants' reply brief due on or before October 16, 1991. A published decision resolving the issues and controversies herein by this Honorable Court will most assuredly impact on this appeal before the Seventh Circuit.

The issues and controversies herein indeed are not moot. The bench, bar, political parties and the public desperately desire and need a definitive published opinion from this Court resolving these issues, as judicial authority for future guidance and direction.

## II

## THERE IS ONLY ONE HAROLD WASHINGTON PARTY

There is only one Harold Washington Party (HWP). The Respondents' contrary assertions, that there are two



HWP, i.e., a "Timothy Evans HWP" and a "R. Eugene Pincham HWP", are (1) deliberate misstatements, (2) without any support whatever, in any record, in any proceeding, before any tribunal below, (3) are diametrically opposed to the uncontradicted and undisputed testimony presented to, and the findings of the Cook County Officers Electoral Board (CCOEB), set forth in argument No. II, pages 31-37 of Petitioners' Brief.

## III.

## THE STATUTORY 25,000 SUBURBAN COOK COUNTY VOTERS' SIGNATURE REQUIREMENT IS UNCONSTITUTIONAL

Without in any way intending to be presumptuous, we respectfully submit that Petitioners' and the Amicus Curiae Briefs adequately and accurately respond to and rebut Respondents' blatantly erroneous argument that the statutory 25,000 suburban Cook County voters' signature requirement is constitutionally valid.

## CONCLUSION

Petitioners pray reversal of the decisions of the CCOEB and the four majority Illinois Supreme Court Justices that Section 10-2, Chapter 46, Illinois Election Code, Ill. Rev. Stat. 1989, required the HWP nominating petitions for suburban Cook County Board Commissioners to contain 25,000 suburban Cook County voters' signatures, and removing the HWP and its candidates from the Cook County, Illinois November 6, 1990 general election ballot.

Respectfully submitted,

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(12)

No. 90-1126

Supreme Court, U.S.
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In The

# Supreme Court of the United States

October Term, 1991

BARBARA NORMAN, et al.,

*Petitioners,*

vs.

DOROTHY REED, et al.,

*Respondents.*

On Writ Of Certiorari To The
Supreme Court Of Illinois

## PETITIONERS' SUPPLEMENTAL BRIEF

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## CONSTITUTIONAL PROVISION INVOLVED

The Constitutional Provision Involved is Article 4, Section 3(b) of the Illinois Constitution, which provides:

> "Legislative Redistricting:
>
> (b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts.
>
> If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later that July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.
>
> The Speaker & Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.
>
> . . .
>
> Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.
>
> If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.
>
> Not later than September 5, the Secretary of State publicly shall draw by random selection

the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law & shall be published promptly by the Secretary of State."

## ARGUMENT

### INTERVENING EVENTS HAVE OCCURRED WHICH CONFIRM PETITIONERS' CONTENTION THAT THE FOUR DEMOCRATIC PARTY ILLINOIS SUPREME COURT JUSTICES' DRAFT ORDER UNDER REVIEW HEREIN WAS BASED ON PARTISAN POLITICAL PARTY LOYALTIES, CONCERNS & CONSIDERATIONS, AND NOT ON THE CONSTITUTION OR DECISIONS OF THIS COURT.

Intervening events have occurred, after Petitioners filed their briefs herein, all of public record, of which this Court may take Judicial notice, and which Petitioners' urge confirm Petitioners' Contention that the draft order of the four Democratic Party Illinois Supreme Court Justices, which removed the Harold Washington Party (HWP) and the HWP Candidates from the November 6, 1991 Cook County, Illinois election ballot, under review herein, was based on partisan political party loyalties, concerns, & considerations, rather than on the Constitution or the decisions of this Court.



For clarity, a brief preliminary statement of events which preceded these intervening events is helpful.

Three of the four Democratic Party Illinois Supreme Court Justices, who entered the HWP removal draft order on Oct. 12, 1991, were elected or appointed to the Illinois Supreme Court from Chicago, Cook County, Illinois. They were Justices, Daniel P. Ward, John Stamos and William Clark. Justice Ward served out his term and retired on December 5, 1990. On December 6, 1990, Justice Ward was replaced on the Illinois Supreme Court by Justice Michael Bilandic, a Democratic Party faithful stalwart from former Major Richard J. Daley's Chicago 11th Ward who was elected mayor of the city of Chicago by the Chicago City Council upon Mayor Daley's death on December 20, 1976. Justice Bilandic ran and was elected to fill Justice Ward's ensuing Dec. 6, 1990 vacancy on the Illinois Supreme Court in the same Nov. 6, 1990 election, from which ballot the four Democratic Party Justices had removed the HWP and its Candidates. Charles Freeman, also a Chicago Cook County Democrat Party loyalist, replaced Justice Stamos on the Illinois Supreme Court in the same election. Thus, the composition of the Illinois Supreme Court remained four Democratic Party Justices, three of whom were elected from Cook County, and the fourth from the East, St. Louis, and Granite City, Ill. area, and three Republican Illinois Supreme Court Justices from the collar counties of Cook County and from down state Illinois.

Article 4, Section 4 of the Illinois Constitution mandates redistricting of the Illinois Legislative Districts in the year following each Federal decennial census. The Illinois Supreme Court Democratic and Republican Party Justices play an extremely vital role in this Constitutional

legislative redistricting scenario. The Democratic Party dominated General Assembly enacted a legislative redistrict map, which was vetoed by Republican Governor Jim Edgar as politically unfair and violative of the Voting Rights Act. Thus, a Legislative Redistricting Commission was required by the Illinois Constitution to be appointed to redistrict the state.

This Legislative Redistricting Commission is composed of eight members, four Democrats and four Republicans appointed by the majority and minority leaders of both houses of the Illinois General Assembly. This evenly divided Legislative Redistricting Commission was unable to agree on a legislative redistrict map. By reason thereof, the Illinois Constitution required the Illinois Supreme Court to "Submit the names of two persons, not of the same political party, to the Secretary of State," who is constitutionally mandated to publicly draw by random selection the name of one of the two persons to break the tie, and serve as the ninth and deciding member of the Legislative Redistricting Commission.

The three Republican Illinois Supreme Court Justices chose the Illinois Republican Party chairman, Albert M. Jourdan, Jr. as the person's name to be drawn by the Secretary of State to protect, aid, and promote the welfare and interests of the Republican Party in drafting a legislative redistrict map.

Of all the Democratic Party members in the State of Illinois who could have been chosen by the four Democratic Party Illinois Supreme Court Justices to aid, protect and promote the welfare and interests of the Democratic Party in drafting a legislative redistrict map, who did the



four Democratic Party Illinois Supreme Court Justices choose? None other than retired Democratic Party Illinois Supreme Court Justice Daniel P. Ward. These four Democratic Party Illinois Court Justices apparently knew and they were well satisfied that their former judicial colleague and associate was up to the task and capable of preserving and benefiting Democratic Party interests.

Thomas Hardy, political writer for the Chicago Tribune, Section 2, page 2, in an article entitled, "Tiebreaker drawing set for legislative remap.", stated that "The decision of the 'winner' [in the drawing of Republican State Party Chairman, Albert M. Jourdan, Jr. or former Democratic Party Illinois Supreme Court Justice Daniel Ward] On a remap will determine the partisan balance of power in the General assembly for the next decade." (appendix page 1)

On Sept. 5, 1991, Thomas Hardy stated in the Chicago Tribune, Section 2, page 1, "Luck of the Draw to settle remap fight," that "If Ward's name is picked, it is expected he will cast the deciding vote for a map of legislative boundaries assuring Democratic Control of the General Assembly into the 21st Century and relegate Republicans to another decade in the minority. . . . Neither of the tiebreaker candidates, nominated last week by the Illinois Supreme Court, is a stranger to Illinois politics . . . " (appendix p. 2).

Incidentally, Illinois Republican Party Chairman Albert Jourdan, Jr. was chosen from the two name lottery by Secretary of State Ryan to break the tie on the Legislative Redistricting Commission. (appendix p. 2-6).

## CONCLUSION

The competing Harold Washington Party's placement on the Nov. 6, 1990 ballot would adversely affect the Democratic Party State and County candidates in that election. Conversely, the four Democratic Party Justices draft order removing the HWP and its candidates from the Nov. 6 ballot would benefit the Democratic Party and its candidates in that election. The removal draft order did not cite or discuss a single case as authority for removal of the HWP and its candidates from the ballot. More particular, the four Democratic Party Illinois Supreme Court Justices did not cite or discuss in their removal draft order this Court's decisions in *Illinois State Board of Election v. Socialist Workers Party*, 440 U.S. 173 (1979); or *Moore v. Ogilvie*, 394 U.S. 814 (1969), both ballot access authorities from Illinois, and both in point with the instant case, as pointed out and reminded by the three dissenting Republican Party Illinois Supreme Court Justices in their two dissenting opinions. The four Democratic Party Illinois Supreme Court Justices also violated their promises of an opinion explaining the reasons for their removal of the HWP from the ballot, an unprecedented failure which has never before occurred. It was extraordinarily unusual in the first instance for the Illinois Supreme Court to remove the appeal of this case from the appellate court, and grant leave for a direct appeal to it. The conglomerate of these foregoing extremely rare and unique circumstances manifestly inveterate that the four Democratic Party Illinois Supreme Court Justices' order removing the HWP and its candidates from the Nov. 6 ballot was purely a political ruling, based on partisan political party loyalties and



concerns, contrary to the United States Constitution and this Court's decisions. It must therefore be reversed and Petitioners so pray.

Respectfully submitted
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## APPENDIX 1

Chicago Tribune, August 29, 1991, Section 2, page 2

**"Tiebreaker drawing set for legislative remap"**
by Thomas Hardy

*"The Illinois Supreme Court named former Justice Daniel Ward, a Democrat, and state Republican Party Chairman Al Jourdan on Wednesday as tiebreaker options in a drawing to end a legislative redistricting impasse.*

Secretary of State George Ryan is scheduled to pick one of the two names in a lottery on Sept. 5. *The decision of the "winner" on a remap will determine the partisan balance of power in the General Assembly for the next decade.*

Members of the high court, in Chicago for a judicial conference, submitted the names to Ryan's office in an order that is part of the complicated, arcane series of steps outlined for redistricting by the state constitution.

*Next week's drawing came into play when an eight-member Illinois Legislative Redistricting Commission, evenly divided between Democrats and Republicans, failed to compromise on new boundaries for legislators by Aug. 10.*

The commission has continued negotiating, but parties on both sides were skeptical that an agreement can be reached by next Thursday.

*The hot potato was tossed in the commission's lap on June 30 when the Democratic-controlled legislature met its deadline for redistricting 59 state Senate and 118 House seats, only to have it vetoed by Republican Gov. Jim Edgar as politically unfair and in violation of the Voting Rights Act.*

*The commission, with its tiebreaker ninth member, must file a final legislative redistricting plan* with the secretary of state's office by Oct., 5. In either case, it is expected to face a court challenge.

A spokesman for Ryan said the drawing will be held in the House chamber of the Capitol. (italics ours)

Chicago Tribune, Thursday, Sept. 5, 1991, page 1, Section 2

**"Luck of the draw to settle remap fight"**
by Thomas Hardy

" . . . Amid some pomp, and not a little nervousness among legislators whose futures hang in the balance, *Secretary of State George Ryan on Thursday will pluck the name of Democrat Daniel Ward or Republican Albert Jourdan from a crystal bowl. The simple gesture,* performed in the imposing House chamber in Springfield, *will designate a winner to act as the tiebreaker on a deadlocked Legislative Redistricting Commission.* Because Ryan's blind choice will have a major impact on Illinois politics into the next decade, a chorus of calls had begun for a constitutional amendment to end the peculiar winner-take-all format unique to Illinois . . .

. . . *If Ward's name is picked, it is expected he will case the deciding vote for a map of legislative boundaries assuring Democratic control of the General Assembly into the 21st Century and relegating Republicans to another decade in the minority.*

If Jourdan is chosen, the GOP state party chairman will likely favor a remap plan shifting control of the



Senate to Republicans as early as next year's elections and making the House a politically competitive, nearly balanced chamber . . .

. . . Under provisions of the state constitution, Thursday's lottery is the endgame in a seven-month, partisan chess match that began when the 1990 census date came out in February.

The eight-member redistricting commission, four Democrats and four Republicans appointed by the legislative leaders, failed to muster five votes for a compromise plan after Edgar vetoed a Democratic-passed remap June 30 . . .

. . . *Neither of the tiebreaker candidates, nominated last week by the Illinois Supreme Court, is a stranger to Illinois politics. Ward, 73, retired last year after 24 years on the Supreme Court* and is a former Cook County state's attorney. Jourdan, 56, is McHenry County auditor in addition to being the state Republican chairman . . . " (italics ours)

Chicago Sun Times, Friday, September 6, 1991 page 1

**"Suburb gain seen as GOP wins remap panel vote"**
by Charles N. Wheeler III

"Republicans received an additional, tie-breaking vote on a deadlocked remap panel Thursday, portending a shift in legislative power from Chicago to the suburbs.

State GOP Chairman Albert M. Jourdan Jr.'s name was picked from a crystal bowl in a random, winner-take-all cartographic sweepstakes. Republicans now have a 5-4

majority on the Legislative Redistricting Commission, enough votes to enact a map of their choosing.

A GOP-leaning map, if it survives inevitable court challenges, could provide the underpinnings for Republicans to dominate the Legislature throughout the 1990s, just as the Democrats did in the last decade after winning a similar draw 10 years ago. Democrat-dominated Chicago is likely to lose legislative seats, while heavily Republican suburbs will probably gain some . . . The Republicans, stroke of good fortune came when Secretary of State George H. Ryan drew from a hand-cut crystal bowl a blue-and-white capsule that contained a slip of paper bearing Jourdan's name and signature.

Ryan opened the capsule, unfolded the paper, and read, Al Jourdan, setting off an elated roar from lawmakers, aides and others on the Republican side of the packed House chamber, where the drawing occurred.

Across the blue-carpeted center aisle, there was dead silence on the Democratic side, where spectators had hoped Ryan would pick instead the name of former Supreme Court Justice Daniel P. Ward, the Democratic tie-breaker nominee.

The drawing was mandated by the 1971 Constitution, which calls for a tie-breaker, if the remap commission fails to produce a plan by Aug. 10. The mapmaking assignment was handed to the panel's four Democrats and four Republicans after Edgar vetoed a redistricting plan crafted and passed by the Democrat-controlled Legislature.



*'We would have been a lot happier if Justice Ward's name was pulled,* but this is the first step in a long process,' said Democratic State Chairman Gary J. LaPaille, chief of staff for House Speaker Michael J. Madigan (D-Chicago) and a key architect of the 1981 plan." (italics ours)

Chicago Tribune, Friday, Sept. 6, 1991, page 1

**"Republicans hit jackpot in legislative remap"**

"As a smile flickered across his otherwise staid expression, Republican Secretary of State George Ryan stood at the speaker's lectern in the crowded House chamber and announced he had randomly selected the name of state GOP Chairman Albert M. Jourdan to act as tiebreaker on a deadlocked Legislative Redistricting Commission.

The selection of Jourdan to give the GOP a 5-4 majority on the remap panel will automatically color Illinois' new legislative boundaries in Republican shades.

Recognizing an opportunity to change the face of state politics and government in their collective likeness, Republicans acted like newly minted millionaires.

Unrestrained shouts of joy, seldom heard from the GOP side of the House during the last decade, arose after Ryan, a pharmacist, removed a teal blue slip of paper with Jourdan's signature from one of two large, blue-and-white pharmaceutical capsules held in a hand-cut crystal bowl.

Within minutes, champagne toasts to a new Republican era were being raised in GOP staff offices.

On the other side of the aisle, Democrats sat in stunned silence as the name of their tiebreaker candidate, former Illinois Supreme Court Justice Daniel Ward, sat undisturbed in the remaining capsule."

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Supreme Court, U.S.
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No. 90-1126
No. 90-1435

In The

# Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, et al.,

*Petitioners,*

v.

DOROTHY REED, et al.,

*Respondents.*

On Writ Of Certiorari To The Supreme Court of Illinois

## BRIEF FOR THE COMMITTEE FOR PARTY RENEWAL AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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A. Ludington, American Ballot Laws: 1888-1910 (1911) ..... 9

D. Mazmanian, Third Parties in Presidential Elections (1974) ..... 5, 7



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S. Rosenstone, R. Behr, E. Lazarus, Third Parties in America (1984) ..... 3, 7

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Consent to file this brief as amicus curiae in support of Petitioners has been obtained from counsel for Petitioner Cook County Officers Electoral Board (No. 90-1435), Petitioners Barbara J. Norman, et al., (No. 90-1126), and Respondents Dorothy Reed, et al., and are on file with the clerk.

## INTEREST OF THE AMICUS CURIAE

The Committee for Party Renewal is a bipartisan, voluntary association of over 200 political scientists, party leaders, and elected officials who believe that strong political parties are essential for effective popular control of government. The Committee is dedicated to strengthening parties – the only broad based, popular intermediaries between the people and their government – as representative and purposeful institutions. The Committee's members include the country's leading political scientists, among them James MacGregor Burns, Gerald Pomper, Everett Carll Ladd, Rep. William Thomas (R-CA), Rep. David Price (D-NC), William Crotty, John Jackson of Southern Illinois University, and John Bibby.

The Committee's Principles, published in 1977, hold that, "without parties there can be no organized and coherent politics. When politics lacks coherence, there can be no accountable democracy. Parties are indispensable to the realization of democracy." In support of its mission, the Committee conducts educational efforts, has provided testimony to Congress, and has participated in court actions in support of strong parties and responsive government.

## I. SUMMARY OF ARGUMENT

The prevailing consensus that exists among political scientists about the importance of parties has been succinctly summarized: "No America without democracy, no democracy without politics, no politics without parties." Ladd, *Political Parties, "Reform," and American Democracy,* Challenges to Party Government (J. White, J. Mileur, eds. forthcoming, So. Ill. Univ. Press 1992). Effective third parties are a small but integral part of the American "two party" system. They raise issues, introduce ideas into political discourse, perform the vital function of educating voters to their points of view, link voters apathetic toward or alienated from the major parties to government, and provide a check on major party abuse of power. The legitimate purpose of ballot access laws is to prevent fraud and provide for orderly elections – not to limit the ability of representative third parties to place candidates before the electorate.

The challenged portions of the Illinois Election Code, Ill. Rev. Stat. ch. 46, para. 10-2 and 10-5 (1989), burden constitutional rights of party members and voters while advancing no state interest. Indeed, the Illinois code runs directly counter to state and societal interests in promoting a strong party system. These provisions of the Code constitute unwarranted interference in party affairs and an abuse of the state's authority to regulate elections, and have a detrimental effect on American political life.



## II. ARGUMENT

### A. Electoral Participation of Third Parties is an Integral and Beneficial Part of the American Political System.

The most distinctive feature of American democracy is the two-party system, or, more properly put, a multiparty system dominated by two major parties. E. Schattschneider, Party Government 67-68 (1942). Despite this two party dominance, political scientists have long recognized the vital supporting role played by "third" parties. As V.O. Key, one of the foremost observers of American polity, observed nearly three decades ago, third parties are "integral elements" of the American system. V. Key, Politics, Parties and Pressure Groups 279 (5th ed. 1964).

The contributions of third parties are many. As the major parties tend to seek the safe middle ground to appeal to the broadest possible segment of the electorate, it has often been left to third parties to articulate new ideas and to demonstrate the existence of voting blocks that can be wooed by a major party willing to adopt an issue. Key, *supra* at 258-59. There is little doubt that the Liberty and Free-Soil Parties helped to force the issue of slavery onto the nation's agenda in the 1840's. F. Smallwood, The Other Candidates 25 (1983). Among the many well established policy innovations first advocated by third parties are woman's suffrage, farm aid, child labor laws, and federal old-age pensions. S. Rosenstone, R. Behr, E. Lazarus, Third Parties in America 8 (1984). This role as innovators and catalysts to change prompted one former President of the American Academy of Historians to declare that a vote for third parties was "probably the

most powerful vote that has ever been cast." Hicks, *The Third Party Tradition in American Politics*, 20 Miss. Valley Hist. Rev. 3, 27 (1933).

In a similar vein, third parties propose and explain new ideas and policies to the public. Smallwood, *supra* at 26. Third party campaigns are often geared more to education than election. Their campaigns become a forum for a substantive debate of new ideas, far removed from the sound-bites and glossy media campaigns of the major parties. They thus serve an important public purpose even when their ideas are ultimately rejected.

Third parties add to the stability of the American two-party system by serving as outlets for constructive protest and by providing a vehicle for disenfranchised minorities to participate in the system. For example, studies have shown that supporters of George Wallace's 1968 American Independent Party generally felt alienated from society and ignored by the major political parties and their presidential nominees. Pettigrew, Riley & Vanneman, *George Wallace's Constituents*, 5 Psychology Today 47 (Feb. 1972). Similarly, supports of John Anderson's independent candidacy in 1980 were expressing displeasure with the two major party presidential candidates. G. Pomper, The Election of 1980 (1981). The Harold Washington Party, which would be stricken from the ballot if the challenged provisions of the Illinois code are upheld, brilliantly illustrates this paradigm. Black voters traditionally vote less than their white counterparts and feel less a part of American society. Many African-Americans still fear reprisal for exercising their right to vote. St. Angelo & Puryear, *Fear, Apathy, and Other Dimensions of Black Voting*, The New Black Politics (M. Preston, L. Henderson, Jr., P. Puryear, eds. 1982) The Harold Washington Party, by appealing directly to voters who believe they have been shut out of the system, serves the classic third party function of linking alienated voters to government. *See* G. Sartori, Parties and Party Systems 25 (1976).



By campaigning on new and alternative themes and issues, and reaching out to alienated voters, third parties also combat voter apathy. Turnout in American presidential elections fell from 60.9% in 1968 to just 50.2% in 1988.[1] In 1988, 57% of respondents told the Gallup organization that they wished they had, "a different set of choices." J. White, the New Politics of Old Values 173 (1990). Third parties combat apathy by offering choice to voters unimpressed with major party candidates. D. Mazmanian, Third Parties in Presidential Elections 77-81 (1974). In 1990, third parties drew 2.8 million votes in the 23 gubernatorial races, and 480,000 votes in the 13 U.S. Senate races, in which they appeared on the ballot.[2]

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[1] Percentages of registered voters voting have been: 1968, 60.9%; 1972, 55.2%; 1976, 53.5%; 1980, 52.6%; 1984, 53.4%; and 1988, 50.2%. F. Sorauf, H. Beck, Party Politics in America 209-210 (1988); P. Abramson, J. Aldrich, D. Rohde, Change and Continuity in the 1988 Elections (1990).

[2] *See* Alaska Official Returns (1990); Arizona Official Canvass (1990); California Statement of Votes (1990); Connecticut Statement of Vote (1990); Delaware Official Results of General Election (1990); Georgia Tabulation by Counties (1990); Hawaii Results of Votes Cast (1990); Illinois Official Vote (1990); Iowa Official Canvass Summary (1990); Kansas Election Statistics (1990); Maine General Election Tabulation (1990); Massachusetts Returns of Votes (1990); Michigan General Election Returns (1990); Minnesota Election Results (1990);

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In the 1990 elections, 77 of 435 U.S. House seats – 18% of the total – went uncontested by one of the major parties. Clerk of the U.S. House of Representatives, Statistics of the Congressional Election of November 6, 1990 (1991). There was no major party contest in 34.3% (2099 of 6114) of the races for state legislatures.[3] In these situations third parties provide choice and some level of

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Montana Report of Official Canvass (1990); Nevada Official Abstract of Votes Cast (1990); New Hampshire Manual for General Court (1991); New Jersey Results of General Election (1990); New York Official Election Returns (1990); Oklahoma Election Results and Statistics (1990); Oregon Official Abstract of Votes (1990); South Carolina General Election Returns (1990); South Dakota Official Election Returns (1990); Tennessee General Election (1990); Texas General Election Returns (1990); Vermont Official Report of the Canvassing Committee (1990); Virginia Official Election Returns (1990).

[3] *See* Alabama certified vote totals (1990) (unpublished); Alaska Official Returns (1990); Arizona Official Canvass (1990); Arkansas General Election Returns (1990); California Statement of Votes (1990); Colorado Abstract of Votes Cast (1990); Connecticut Statement of Vote (1990); Delaware Official Results of General Election (1990); Florida Official General Election Returns (1990); Georgia Tabulation by Counties (1990); Hawaii, Results of Votes Cast (1990); Idaho Abstract of Votes (1990); Illinois Official Vote (1990); Indiana Election Report (1990); Iowa Official Canvass Summary (1990); Kansas Election Statistics (1990); Kentucky Official Election Returns (1990); Report of the Secretary of State of Louisiana (1990); Maine General Election Tabulation (1990); Maryland General Election Returns (1990); Massachusetts Returns of Votes (1990); Michigan General Election Returns (1990); Minnesota Election Results (1990); Mississippi Certified Returns (1990); Missouri Certified Totals of the General Election (1990); Montana Report of Official

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competition where the major parties choose not to. Indeed, in Chicago, it is the Harold Washington Party that provides the most effective opposition in an area where the Republican Party has long been ineffective at wooing voters.[4]

Finally, third parties serve as a constant check on the major parties. Their existence, as competition waiting in the wings, forces the major parties to be responsive to change. The most successful third party movements are a response to major party failure. Rosenstone, *supra* at 215-16. Major party performance is most satisfactory when the threat of third parties exists. Smallwood, *supra* at 27; Mazmanian, *supra* at 150.

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(Continued from previous page)

Canvass (1990); Nevada Official Abstract of Votes Cast (1990); New Hampshire Manual for General Court (1991); New Jersey Results of General Election (1990); New Mexico Official Returns (1990); New York Official Election Returns (1990); North Carolina Abstract of Votes Cast (1990); North Dakota Official Abstract of Votes Cast (1990); Ohio Report of Votes (1990); Oklahoma Election Results and Statistics (1990); Oregon Official Abstract of Votes (1990); Pennsylvania General Election Official Returns (1990); Rhode Island Tabulation of Votes Cast (1990); South Carolina General Election Returns (1990); South Dakota Official Election Returns (1990); Tennessee General Election (1990); Texas General Election Returns (1990); Utah Official Returns (1990); Vermont Official Report of the Canvassing Committee (1990); Virginia Official Election Returns (1990); Washington Official Returns of the General Election (1990); West Virginia Official Returns of General Election (1990); Wisconsin Results of General Election (1990); Wyoming Official Directory (1991). Nebraska holds nonpartisan elections.

[4] The Harold Washington Party's 1989 mayoral candidate, Timothy Evans, finished second with 41% of the vote; its 1991 mayoral candidate, R.E. Pincham, finished second with 25% of the vote, to the third place Republican's 3.7%.

Third parties have played a greater role in American politics than most casual observers realize. Prior to 1920, the composition of the U.S. House of Representatives typically included up to a dozen or more third party members. Third parties elected governors, gained majority control of city administrations and, in some cases, won majorities in state legislatures, all without upsetting the basic stability of the two-party system. *See* Smith, *Judicial Protection of Ballot-Access Rights*, 28 Harv. J. on Legis. 167, 169-171 (1991).

In fact, despite their occasional successes, third parties pose no threat to two party stability. Even if a third party were to replace one of the major parties, as the Republicans replaced the Whigs between 1854 and 1856, the system would remain one of two party domination. "We could not discard the two-party system and adopt a multiparty system in the United States . . . even if we wanted to do so." Schattschneider, *supra* at 67.

The reason for this is the U.S. system of single-member, winner take all districts. This system is used in all federal elections, including the electoral college, by all states, and for most local offices. Because a party receives no representation unless it can carry the electoral district with a plurality, the system puts severe pressure on parties hoping to gain over time. Voters will gravitate toward the most like-minded candidate perceived as having a chance to win. Facing a complete exclusion from office, parties are pressured to coalesce with like-minded parties until just two major parties remain. Typically, third party electoral successes are followed closely by changes in the major party platforms aimed at either absorbing the third party outright, or at least convincing its voters that the



major party is a palatable enough alternative that it will not pay to vote for the third party, which is unlikely to gain power. Schattschneider, *supra* at 69-74. Only by concentrating strength in particular geographic regions have third parties been able to prosper in countries with single member districts, and even then they normally operate as one of just two dominant parties in their region, typically coalescing with one of the major parties when national issues are at stake. D. Rae, Political Consequences of Electoral Laws 92-95 (1971).

Given this, the proper role of ballot access laws is merely to provide an orderly method of conducting elections. Ballot access laws are a particularly clumsy and unnecessary mechanism for maintaining political stability, *Storer v. Brown*, 415 U.S. 724, 736 (1974); preventing factionalism, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 223 (1986); assuring majority winners, *Williams v. Rhodes*, 393 U.S. 23, 32 (1968); or fulfilling any state interest other than avoiding voter confusion and assuring fair and honest elections.[5]

When ballot laws are used to keep bona fide third parties off the ballot, they rob the American political system of a small but important part of its machinery for maintaining a stable, responsive democratic system.

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[5] In fact, after preventing fraud, the secondary objective of early supporters of the government printed "Australian" ballot was to make it *easier* for third parties to contest elections. *See* J. Wigmore, Australian Ballot System 25-26 (1889). Sixteen states originally adopted the Australian ballot with no access requirement at all save notice to the state. *See* A. Ludington, American Ballot Laws: 1888-1910 (1911).

### B. The Challenged Provisions of the Illinois Election Code Are Overly Restrictive and Serve No Legitimate State Interest

Petitioners have contested the constitutionality of Section 10-2 of the Illinois Election Code, Ill. Rev. Stat. ch. 46, para. 10-2 (1989), as it requires 50,000 petition signatures for a new party to qualify for the ballot in a portion of the state, but only 25,000 signatures to qualify statewide. Amicus curiae is of the opinion that this provision is facially invalid under this Court's holding in *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979), but leaves discussion of the issue to the parties. Of great immediate interest to amicus curiae, because the issues have not previously come before this court, is whether the state has a compelling interest in either restricting the use of a party's name as it expands into new portions of the state, Ill. Rev. Stat. ch. 46, para. 10-5 (1989), or in requiring a party to nominate a full slate of candidates in the state or district within which a new party seeks to operate, Ill. Rev. Stat. ch. 46, para. 10-2 (1989).

This Court has long recognized that state ballot access laws:

> place burdens on two different, although overlapping kinds of rights – the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.

*Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

As a result, states are required to justify their ballot access laws by identifying a compelling state interest



served by those laws.[6] Among those interests previously recognized by this Court are avoiding voter confusion, promoting political stability, avoiding factionalism, avoiding clogged election machinery, blocking frivolous candidacies, and generally assuring fair and honest elections.[7] Sections 10-2 and 10-5 of the Illinois Election code are extraordinarily ill-suited to advance any of these state interests.

Amicus Curiae notes, at the outset, that no other state has adopted the "complete slate" requirement of Section

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[6] Past decisions of this Court have left some doubt as to the standard of review to be applied. In *Williams*, 393 U.S. 23, and *Illinois State Bd. of Elections*, 440 U.S. 173, the Court utilized a strict scrutiny standard of review. However, in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), the Court appeared to use an open-ended balancing test. Given the extent to which the system of single member districts assures a "two-party" system, there is serious doubt whether any ballot access law requiring more than a minimal showing of popular support can qualify as the least drastic means to meet state interests. However, under either standard, the requirements of Sections 10-2 and 10-5 of the Illinois Election Code burden fundamental rights to an extent not justified by state interests.

[7] *See Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *Bullock v. Carter*, 405 U.S. 134 (1972); *Storer v. Brown*, 415 U.S. at 736; *American Party v. White*, 415 U.S. 767, 782 n.14, *reh'g denied* 417 U.S. 926 (1974). However, the Court has made clear that political stability is not an adequate interest where it is a mere excuse to protect existing parties from competition. *Anderson v. Celebrezze*, 460 U.S. at 801.

10-2.[8] While not dispositive of the state's interest, this fact alone casts serious doubt on whether the state's interest is sufficient to justify the burdens placed on fundamental rights. A closer examination shows that the full slate requirement, in fact, runs directly counter to state interests and is an unwarranted intrusion into party affairs.

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[8] *See* Ala. Code § 17-8-2.1 (1988); Alaska Stat. § 15.25.140, *et seq.* (1988); Ariz. Rev. Stat. Ann. § 16-341 (1984 & Supp. 1990); Ark. Stat. Ann. § 7-1-101, *et seq.* (1991); Cal. Elec. Code § 6430 (West 1977); Colo. Rev. Stat. § 1-4-801 (Supp. 1990); Conn. Gen. Stat. Ann. § 9-453a, *et seq.* (West 1989); Del. Code Ann. tit. 15 § 3001, *et seq.* (1981 & Supp. 1990); D.C. Code Ann. § 1-1312 (Supp. 1990), Fla. Stat. Ann. § 99.095, *et seq.* (West 1982 & Supp. 1991); Ga. Code Ann. § 21-2-130, *et seq.* (1987 & Supp. 1990); Haw. Rev. Stat. § 11-62, *et seq.* (1985 & Supp. 1990); Idaho Code § 34-501 (Supp. 1990); Ind. Code Ann. § 3-8-6-1, *et seq.* (Burns 1988 & Supp. 1990); Iowa Code § 45.1, *et seq.* (Supp. 1991); Kan. Stat. Ann. § 25-301, *et seq.* (1986 & Supp. 1990); Ky. Rev. Stat. Ann. § 118.305, *et seq.* (Michie/Bobbs-Merrill Supp. 1990); La. Rev. Stat. Ann. 18 § 461, *et seq.* (West 1979 & Supp. 1991); Me. Rev. Stat. Ann. tit. 21-A § 301, *et seq.* (Supp. 1990); Md. Elec. Code Ann. art. 33 & 4B, *et seq.* (Supp. 1989); Mass. Gen. Laws Ann. ch. 53 § 6, *et seq.* (1990 & Supp. 1991); Mich. Comp. Laws § 168.685 (Supp. 1991); Minn. Stat. § 204B.07, *et seq.* (Supp. 1990); Miss. Code Ann. § 23-15-1051, *et seq.* (1990); Mo. Ann. Stat. § 115.315 (Vernon Supp. 1991); Mont. Code Ann. § 13-10-601 (1989); Neb. Rev. Stat. § 32-526, *et seq.* (1989); Nev. Rev. Stat. § 293.171, *et seq.* (1990); N. H. Rev. Stat. Ann. § 655:40, *et seq.* (1986); N.J. Rev. Stat. § 19:13-3, *et seq.* (1989); N.M. Stat. Ann. § 1-7-1, *et seq.* (1985 & Supp. 1990); N.Y. Elec. Law § 6-100, *et seq.* (McKinney 1978 & Supp. 1991); N.C. Gen. Stat. § 163-96 (1987); N.D. Cent. Code § 16.1-11-30 (Supp. 1989); Ohio Rev. Code Ann. § 3517.01, *et seq.* (Anderson 1988 & Supp. 1990); Okla. Stat. Ann. tit. 26 § 1-108 (West 1991); Or. Rev. Stat. § 249.732 (Supp. 1990); Pa. Stat. Ann. tit. 25 § 2911, *et seq.* (Purdon 1963 & Supp. 1991); R.I. Gen. Laws § 17-14-7 (Supp.

(Continued on following page)



The full slate requirement, by requiring parties to nominate candidates for offices they do not wish to contest, clogs electoral machinery by adding to the number of candidates. It virtually mandates "line-holding" candidacies by frivolous candidates whose only purpose is to assure that their party's more serious candidates qualify for the ballot. Such frivolous candidates are likely to confuse voters far more than the presence of a third party on the ballot.

The full slate requirement does nothing to establish whether those candidates that *are* nominated by a new party have demonstrated the minimum level of support needed to be placed on the ballot.

In *Lubin v. Panish*, 415 U.S. 709 (1974), the Court struck down relatively innocuous filing fees,[9] noting that they bore little relationship to the seriousness of a candidacy or to a candidate's level of popular support. The full slate requirement bears even less relationship to a candidate's seriousness. If full slate laws had been widely adopted, every significant third party candidate for the

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(Continued from previous page)

1989); S.C. Code Ann. § 7-9-10 (Law. Co-op. Supp. 1990); S.D. Codified Laws Ann. § 12-5-1, *et seq.* (1982 & Supp. 1991); Tenn. Code Ann. § 2-13-201 (1985); Tex. Elec. Code Ann. § 181.005, *et seq.* (Vernon 1986 & Supp. 1991); Utah Code Ann. § 20-3-2.5 (Supp. 1991); Vt. Stat. Ann. tit. 17, § 2301, *et seq.* (1982 & Supp. 1990); Va. Code Ann. § 24.1-168 (Supp. 1990); Wash. Rev. Code § 29.24.010, *et seq.* (1965 & Supp. 1991); W.Va. Code § 3-5-22, *et seq.* (1990); Wis. Stat. § 8.01, *et seq.* (1986 & Supp. 1990); Wyo. Stat. § 22-4-201 (Supp. 1990).

[9] The filing fee in question in *Lubin* was just $706.60. 415 U.S. at 711.

Presidency in this century – including Theodore Roosevelt, Robert LaFollette, George Wallace, and John Anderson – would have been excluded from virtually every state ballot. Likewise, smaller third parties which, because of their modest vote totals, are required to regularly file petitions to appear on the ballot, often fail to nominate full slates of candidates. Even when they could meet the requirement, these smaller parties frequently choose not to contest every race so that they can focus their limited resources on those races deemed most important to them, including those where they perceive the best chance of winning.

There is no state interest in forcing third parties to nominate full slates of candidates. Established parties in Illinois are free to pick and choose the races they will contest, with no apparent detriment to the state. In 1986 the Democratic Party of Illinois had no candidate for Governor on the ballot. In 1990, 50 of 118 races for the Illinois House and seven of 20 races for the Illinois Senate had no major party contest.[10]

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[10] Illinois Official Vote (1990). In 1990, either or both of the major parties did not nominate a full slate of candidates for statewide office in thirteen states. See Alabama, certified vote totals (1990) (unpublished); Arizona Official Canvass (1990); Arkansas General Election Returns (1990); Georgia Tabulation by Counties (1990); Idaho Abstract of Votes (1990); Mississippi Certified Returns (1990); Nevada Official Abstract of Votes Cast (1990); New Mexico Official Returns (1990); Oregon Official Abstract of Votes (1990); South Carolina General Election Returns (1990); Texas General Election Returns (1990); Virginia Official Election Returns (1990); West Virginia Official Returns of General Election (1990).



Whether or not a party should nominate candidates for a few offices, or all of them, is a *strategic* decision traditionally made by the parties free of government interference – be they "minor" or "major" parties. Parties decide how much of their precious resources, including both money and manpower, they wish to devote to their candidates' campagins. Frequently, parties make decisions *not* to contest offices, finding no suitable candidates, or believing that such a contest would be a waste of time.

Indeed, the right not to nominate would seem to be an inseparable part of the fundamental right to associate for political ends. This Court has appropriately recognized that the state has no compelling interest in determining political party strategies, telling a party how to choose its nominees, or protecting parties from their own potentially foolish decisions. *Eu v. San Francisco Democratic Comm.*, 489 U.S. 214 (1989); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986). Parties are in the best position to know their own interests.

Likewise, Section 10-5 of the Illinois Election Code, which restricts the ability of the Harold Washington Party to expand into new portions of the state under its own name, serves no rational state interest. Admittedly the state has no interest in avoiding the voter confusion likely to result if various distinct parties operated under the same, or even substantially similar names around the state. However, in this case, it is undisputed that the candidates seeking to use the Harold Washington Party name in suburban Cook County have permission and are members of the same party already established in the city of Chicago. *See Reed v. Norman*, No. 70833 slip op. (Ill.

Oct. 12, 1990) (Miller, J., dissenting). The decision below amounts to the rather Kafkaesque suggestion that a party should be kept off the ballot because voters will be confused if the party campaigns under its own name.

From a standpoint of linking voters to government through identification with political parties, and providing for political vision through articulated party platforms, it is hard to imagine a more destructive law, or one better designed to confuse voters, than one which requires a party to operate under different names in different political subdivisions. Far from serving a valid state interest, Section 10-5 of the Illinois Election Code, as interpreted by the Illinois Supreme Court, promotes voter confusion and is contrary to the best interests of political parties and the American political system.

In many ways, the Harold Washington Party represents the classic model of third party activity in America. In an area long noted for an absence of two party competition, the Party has provided such competition. It has done so by bringing into the political system voters who have long felt ignored by that system and perhaps even afraid to participate in that system. There can be little doubt of the Harold Washington Party's substantial popular support or legitimacy. Unlike many third parties, it not only seeks to educate, but realistically seeks to govern. Illinois can have no legitimate interest in keeping this party off its ballot.

The demands of democracy make it essential that third parties be permitted to run. However, because state legislators are not only overwhelmingly members of the two major parties, but human, there will always be some



tendency to overly discount the rights of third party members, to ignore the benefits of third party activity, and to use ballot access laws not only to prevent fraud and conduct orderly elections, but to eliminate political competition. R. Huckshorn, Political Parties in America 53 (1984). It is incumbent on this court to examine carefully the proferred interests of the states in their ballot access laws, and where those laws needlessly infringe on the fundamental First and Fourteenth Amendment rights of third party activists, members, and voters, to strike those statutes down.

## III. CONCLUSION

Section 10-2 and 10-5 of the Illinois Election Code burden the fundamental rights of voters and cannot be justified in terms of legitimate state interest. The decision of the Illinois Supreme Court should be reversed by this Court.

Respectfully submitted,

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Nos. 90-1126, 90-1435 Consolidated

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1991

BARBARA J. NORMAN, *et al.*,

*vs.* *Petitioners,*

DOROTHY REED, *et al.*,

*Respondents.*

COOK COUNTY OFFICERS ELECTORAL BOARD, *et al.*,

*vs.* *Petitioners,*

DOROTHY REED, *et al.*,

*Respondents.*

ON WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

## BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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## INTEREST OF THE AMICI

The American Civil Liberties Union (ACLU) is a national organization with nearly 300,000 members. The American Civil Liberties Union of Illinois (ACLU of Illinois) is the Illinois affiliate of the ACLU. The ACLU and its affiliates have been traditionally devoted to the protection and enhancement of fundamental liberties and basic civil rights.

Within a representative democracy, no right is more fundamental than the "equal right to vote." *Evans v. Cornman*, 398 U.S. 419, 426 (1970). Accordingly, this Court has repeatedly recognized the importance of rights of electoral participation and political association.

The instant controversy, involving the constitutionality of Illinois' procedures for creation and expansion of local political parties, deeply implicates these important political and associational interests. Indeed, it is the position of *amici* that Illinois' procedures impermissibly abridge these fundamental rights of political expression and association. *Amici* respectfully submit this brief to advance their position to this Court.

## STATEMENT OF FACTS

Officials of Cook County, Illinois are elected from three constituencies. Some, including the President of the County Board, the State's Attorney, the Sheriff, and the County Clerk are elected from the county as a whole. Members of the County Board have been elected from two districts, one constituting the portion of the county within the City of Chicago ("City District") and one constituting the portion of the county outside that city ("Suburban District").[1] Ill.

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[1] The City of Chicago is not entirely contained within Cook County. The territory of the City includes O'Hare International Airport, and a portion of the Airport lies in DuPage County.

Const., Transition Schedule§ 5(b). The two districts have disparate populations,[2] so that in 1990 the more populous City District elected ten members at large and the Suburban District elected seven members at large.[3] *See Sutton v. Dunne*, 681 F.2d 484 (7th Cir. 1982) *cert. denied*, 460 U.S. 1081 (1983) (reapportioning Board members).

Illinois law provides two ways in which political parties may place before the electorate candidates for these offices. If one or more of a party's candidates for statewide office at the last general election for such offices polled more than 5% of the entire vote cast for that office, the party is an "'established political party' as to the state *and* as to any district or political subdivision thereof." Election Code, § 10-2, Ill. Rev. Stat. Ch. 46, § 10-2 (1989) (emphasis added).[4] A political party which is not established statewide may still be established in a particular subdivision, such as Cook County, if one or more of its candidates in that subdivision at the most recent election received more than 5% of the total votes cast for the offices sought.

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[2] At the 1980 Census, the population of the City of Chicago was 3,005,072 and the population of Cook County was 5,253,628. State & Metropolitan Area Data Book, 82, 400 (U.S. Government Printing Office 1986). Thus, the population of suburban Cook County was roughly 2,250,000. In 1986, the last election for the County Board prior to 1990, there were 1,476,370 votes cast, 841,085 in the City District and 635,285 in the Suburban District. Brief of Respondents Dorothy Reed, Valerie A. Sutton, Patton L. Fletcher, Ervin S. Ricks, and David Barrera in Opposition ("Br. In Opp.") 7. (The Petition for Writ of Certiorari in No. 90-1126 will be referred to as "HWP Pet." and that in No. 90-1435 will be referred to as "Board Pet.")

[3] At the November 1990 election, voters approved a binding referendum providing for election of all members of the County Board from 17 single-member districts. The first election of that sort will be in 1994.

[4] The Election Code is contained entirely within Chapter 46 of the Illinois Revised Statutes, and the section numbers therein are identical to the Code's own section numbers. Accordingly, no further parallel cites to the Illinois Revised Statutes will be given.



*Id.* Established political parties nominate candidates in primary elections and the names and party designations of those nominees then appear on the general election ballot. *Id.* § 7-1 *et. seq.* Parties which are not established are designated minor parties and must nominate candidates by petition. *Id.* § § 10-1 *et seq.*

In 1990, there were three parties established statewide: the Democratic Party, the Republican Party, and the Solidarity Party.[5] No other political parties were established in Cook County. In addition to the three statewide parties, the Harold Washington Party ("HWP") was established in the City of Chicago. (HWP Pet. 6.) However, the status of the HWP in Chicago did not entitle it to nominate candidates for Cook County offices, even those elected from the City District.

A minor party seeking to nominate candidates by petition must set forth "a complete list of candidates of such party for all offices to be filled in the . . . . political subdivision at the next ensuing election." Election Code § 10-2. As interpreted by the Illinois Supreme Court in this case, this provision requires a party seeking to present *any* candidates to the voters of Cook County to nominate candidates for *all* of the countywide positions and *all* positions on the County

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[5] The Solidarity Party was formed in 1986 when Adlai Stevenson III was nominated for Governor by the Democratic Party and found the candidates nominated for Lieutenant Governor and Secretary of State unacceptable running mates. By the time of the primary election, it was no longer possible to qualify for the ballot as an independent candidate, so formation of a new political party was necessary to run without associating with the unacceptable candidates. *See Stevenson v. State Board of Elections*, 638 F. Supp. 547 (N.D. Ill. 1986), *aff'd* 794 F.2d 1176 (7th Cir. 1986). A subsequent effort to merge the Solidarity Party into the Democratic Party was vetoed by Governor James Thompson, the candidate who defeated Stevenson. *Solidarity Party Gets A Reprieve: Thompson's Veto Action Will Let It Die A Natural Death*, Chicago Tribune, Sept. 25, 1987, at 24. Thus, although now abandoned by its founders, the Solidarity Party has continued to hold primary elections and will continue to do so as long as the occasional nominees receive the necessary votes. There is a dispute as to whether the votes received at the 1990 election were sufficient to allow that party to remain established. The Attorney General of Illinois has opined that it did not receive sufficient votes.

Board, both from the City District and from the Suburban District. (Board Pet. App. 4a.)

Because Cook County is "a political subdivision in which officers are to be elected from districts and at-large," the nominating petition is required "to consist of separate components for each district from which an officer is to be elected." *Id.* Thus, a petition to nominate minor party candidates in Cook County was required to contain three components: one for the county at large, one for the City District, and one for the Suburban District.[6]

Formation of a new political party for the entire state requires signatures of "1% of the number of voters who voted at the next preceding statewide general election or 25,000 qualified voters, whichever is less." *Id.* To form a new party in a political subdivision of the State, a nominating petition must be

> signed by qualified voters equaling in number not less than 5% of the number of voters who voted at the next preceding regular election . . . However, whenever the minimum signature requirement for a district or political subdivision new political party petition shall exceed the minimum number of signatures for Statewide new political party petitions at the next preceding Statewide general election, such Statewide petition signature requirement shall be the minimum for such district or political subdivision new political party petition.

*Id.*

Based on the votes cast in the 1986 election, 5% of the votes cast would have been 73,818 for Cook County as a whole; 42,054 for the City District; and 31,764 for the Suburban District. However, because the statewide minimum was limited to 25,000, that number

[6] In 1994, 18 components will be required, one at-large and one in each of the 17 County Board Districts.



would also suffice for each component of the petition. But the two districts are mutually exclusive, so the requirement of 25,000 signatures on each component means that the entire petition must contain at least 50,000 signatures, double the number required for a statewide petition.[7]

Nominating petitions for minor party candidates are required to specify the name of the party represented by the candidates. "However, such party shall not bear the same name as, nor include the name of any established political party." Election Code § 10-5.2. There is no provision whereby a party established in one political subdivision, such as the City of Chicago, may nominate candidates under its own name or authorize an affiliated group to nominate candidates under that name in another political subdivision, such as Cook County.

At issue in this case is a duly filed petition seeking to nominate petitioners Barbara Norman, *et al.* ("HWP Candidates") as candidates of the HWP for the various offices of Cook County to be elected at the November, 1990 election. Those petitions bore roughly 44,000 signatures from the City District and roughly 7,800 from the County District. (Board Pet. App. 46a). The HWP was formed by those unhappy with what they felt was inadequate responsiveness of the Chicago and Cook County Democratic Party to the concerns of the African-American community. (HWP Pet. 6.)

Objections to the petitions were filed by Respondents Dorothy Reed, Valerie A. Sutton, Patton L. Fletcher, Ervin S. Ricks, and David Barrera ("Objectors"). (J.A. 6.) So far as pertinent here, Objectors challenged (1) the failure of the petition to contain sufficient signatures on its Suburban District component and (2) use of the HWP name. (J.A. 6.)

[7] In 1994, with the establishment of single-member County Board Districts, the total required would be 5% of the total vote in the 1990 election. Had that system been in effect in 1990, it would have required a total of 73,818 signatures, almost triple the requirement for a statewide petition.

The sole evidence on use of the HWP name indicated that the nominations were made on behalf of an affiliate of the established HWP and with the consent of Tim Evans, the sole candidate of the established HWP and the person authorized by State law to appoint party committees pending their election in the 1992 primary. (Board Pet. App. 40a.)

The Cook County Officers Electoral Board ruled that the HWP candidates were entitled to use the HWP name. (Board Pet. App. 41a.) Because the Suburban District component had insufficient signatures, it ruled that the Suburban District Candidates could not appear on the ballot. (Board Pet. App. 48a.) But because the at-large component and the City District component did have sufficient signatures, it ruled that the other HWP candidates could appear on the ballot for the at-large and City District offices. (Board Pet. App. 47a-48a.)

The Objectors appealed, and the Circuit Court of Cook County ruled that none of the HWP candidates could appear on the ballot. (Board Pet. App. 22a-24a.) It ruled that the lack of sufficient signatures on the Suburban District component was fatal to the remaining components of the petition. (Board Pet. App. 23a-24a.) That order was stayed by the Illinois Appellate Court, thus leaving the Electoral Board order in effect. (J.A. 116.)

The Illinois Supreme Court, granted direct review and, on a 4-3 vote, affirmed. (Board Pet. App. 2a-5a.) The majority ruled that use of the HWP name violated § 10.5 of the Election Code and that failure to file sufficient signatures on the Suburban District component was fatal to the entire petition. (Board Pet. App. 4a.) The stay previously entered was vacated. (Board Pet. App. 4a.)

This Court stayed the Illinois Supreme Court's order, thus leaving the Electoral Board order in effect. (J.A. 118.) The HWP candidates appeared on the ballot, and one of them received 15.4% of the votes cast for the office she sought. Official Canvas of the Votes



Cast at the November 6, 1990 General Election (Cook County Clerk 1990). Thus, if the HWP was entitled to appear on the ballot, it has become an established political party in Cook County, entitled to nominate candidates at the next election.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Representative democracy rests upon the "consent of the governed" and this "consent" is, in turn, obtained by permitting the people to freely and fairly choose their political leaders. Alexander Hamilton observed that the essence of representative government is "that the people should choose whom they please to govern them." 2 *Elliot's Debates* 257.

This unexceptional proposition was also explored by Chief Justice Warren who noted that representative democracy "is undermined as much by limiting whom the people can select as by limiting the franchise itself." *Powell v. McCormack*, 395 U.S. 486, 547 (1969). Accordingly, our contemporary claim of commitment to democratic government has a hollow ring when we design laws that fail to confer upon our citizens the widest possible freedom to choose among the candidates seeking public office.

"[A] voter hopes to find on the ballot a candidate who comes near to reflecting his policy preferences on contemporary issues." *Lubin v. Panish*, 415 U.S. 709, 716 (1974). "This does not mean every voter can be assured that a candidate to his liking will be on the ballot," but a state may not discriminatorily obstruct the ability of like-minded citizens to put their candidates before the electorate. *Id.*

If minor parties are unduly limited in their access to the ballot, then voters are left without adequate alternatives to what they may find to be unsatisfactory offerings of the major parties. But the significance of ballot access is not measured solely by the ability of minor party nominees to be elected, for that would ignore

> the significant role that third parties have played in the political development of the Nation. Abolitionists,

> Progressives, and Populists have undeniably had influence, if not always electoral success. As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as attaining political office. Overbroad restrictions on ballot access jeopardize this form of political expression.

*Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173, 185-86 (1979) (citations omitted); *Anderson v. Celebrezze*, 460 U.S. 780, 787-88, 794 (1983).

Minor parties also serve, as the HWP may do, as an alternative means of political expression for constituencies dissatisfied with a party to which they have previously adhered. If a constituency is large enough or the new party forms coalitions with other voters, the new party may itself become a major force. The renewed need of the old party to compete for once-reliable adherents also may alter the positions of that party, thus improving the lot of the formerly dissatisfied group. The new party may instead alert another major party to an electoral opportunity, thereby facilitating a transfer of allegiance in return for greater attention to the constituency which the new party sought to represent. For all of these reasons, the ability to associate by forming or expanding new parties is of fundamental importance to all citizens and is a significant factor in the democratic dynamic which keeps government and the political system accountable to the electorate.

A state may not broadly stifle this process by unduly burdening or restricting the formation of new political parties. Even less may it skew the process by granting some voters greater weight than others or by making it easier for some groups to form new parties than for other groups which are similarly situated with respect to the electoral process. Illinois has done both of these forbidden things. It has given greater weight to suburban voters by requiring equal numbers of signatures from the City District and the Suburban District, even though the latter is significantly less populous. Illinois has also preferred groups with substantial followings in both districts over



more geographically concentrated and insular groups, such as the Cook County African-American community, which is predominantly located in the City District.

The second of these impermissible effects stems from the combination of two rules that, were each taken alone, might well be unobjectionable. One is the requirement that a new party show a modicum of support in *each district* where it nominates candidates rather than accepting such a showing for the *entire subdivision* of which the districts are a part. The other is the requirement that a new party nominate candidates for *all* positions in *all* districts. If Illinois accepted an overall showing of support for the entire County, then the requirement to run candidates in all districts would not obstruct access to the ballot. Conversely, if Illinois permitted a new party to run candidates only at large and in those districts where they could show the requisite support, then the requirement of a district-by-district showing of support would not exclude any candidates who could play a meaningful role in their respective elections. But the *combination* of the two requirements greatly restricts ballot access by geographically concentrated groups, so that combination is forbidden even if each requirement alone would be valid.

Illinois has also directly restricted the ability of parties which have attained a foothold in one political unit to associate with allies or adherents desiring to seek office in another political unit under the banner of the fledgling party. It has disallowed ballot placement for candidates using the name of a party already established in a different political subdivision. Illinois forbids this even though the established party makes no objection to such use of its name and even though that party describes the petitioning organization in the other subdivision as an affiliate. Such an absolute prohibition is impermissible.

Even if Illinois might have prescribed specific procedures to be followed in establishing such affiliations, it may not do so by retroactively placing a stringent and unpredictable restrictive interpretation on an ambiguous statute and then penalizing those who acted before the procedures were defined for failure to correctly

forecast and comply with the not-yet-promulgated requirements. Since Illinois has yet to prescribe *any* procedure for affiliation among local political parties, it may not penalize the HWP candidates for acting on the basis of an informal affiliation.

## ARGUMENT

There is no question here as to the HWP candidates' "preliminary showing of a significant modicum of support" in the constituencies from which they sought to be elected. *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). The HWP candidates had more than 44,000 signatures on their City District component and over 50,000 signatures on their at-large component.[8] Illinois requires no more than 25,000 signatures for any constituency, up to and including the entire State.

By requiring *both* a full slate and 25,000 signatures on *each* component, Illinois has effectively required of Cook County parties double the number of signatures required for parties seeking to make nominations for statewide office, with no reason of any sort, let alone a compelling reason, for doing so. This fact alone shows a violation of the constitutional requirement expounded in *Illinois State Board of Elections v. Socialists Workers Party*, 440 U.S. 173 (1979) (because 25,000 signatures adequate for statewide candidacy, larger requirement for City of Chicago and Cook County unconstitutional). While that violation alone would require reversal of the judgment below, the HWP candidates surmounted even this unconstitutional hurdle: they obtained more than 50,000 signatures on their petition.

Nonetheless, the HWP was disqualified from the ballot on two grounds. Because it lacked sufficient demonstrated support in the Suburban District, it was not permitted to run candidates countywide or in the City District, despite its ample support in each of those

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[8] The HWP candidates had only 7,800 signatures on their Suburban District component, but they do not here challenge exclusion of the suburban candidates from the ballot.



constituencies. Moreover, because the HWP was already established in the City of Chicago, candidates were forbidden to run under its banner for Cook County office. Neither ground can withstand constitutional scrutiny.

### I. THE REQUIREMENT THAT A PARTY MUST HAVE SUPPORT IN *ALL* DISTRICTS OF A SUBDIVISION BEFORE IT MAY RUN CANDIDATES IN *ANY* PORTION OF THE SUBDIVISION UNCONSTITUTIONALLY INFRINGES THE RIGHT OF POLITICAL ASSOCIATION, ESPECIALLY WHERE THE DISTRICTS ARE OF UNEQUAL POPULATION.

"It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958). The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. *Elrod v. Burns*, 427 U.S. 347, 357 (1976) (plurality opinion); *Buckley v. Valeo*, 424 U.S. 1, 15 (1976). "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973); *Tashjian v. Republican Party*, 479 U.S. 208, 214 (1986).

In a representative democracy, "the voters can assert their preferences only through candidates or parties or both." *Lubin v. Panish*, 415 U.S. 709, 716 (1974). "[A] basic function of a political party is to select the candidates for public office to be offered to the voters at general elections." *Kusper v. Pontikes*, 414 U.S. at 58. "The right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes." *Williams v. Rhodes*, 393 U.S. 23, 31 (1968). Moreover, "limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their political

effectiveness as a group" can "threaten to reduce diversity and competition in the marketplace of ideas." *Anderson v. Celebrezze*, 460 U.S. 780, 794 (1983).

Thus, it is well settled that restrictions on access to the ballot burden both "the rights of individuals to associate for the advancement of political belief, and the right of qualified voters, regardless of political persuasion, to cast their votes effectively." *Id.* at 787. "Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). And the right to vote is "heavily burdened if that vote may be cast only for one of two [or three] parties at a time when other parties are clamoring for a place on the ballot." *Williams v. Rhodes*, 393 U.S. at 31. Thus, "[i]f the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest and is narrowly tailored to serve that interest." *Eu v. San Francisco Democratic Comm.*, 489 U.S. 214, 222 (1989) (citations omitted).

Exacting scrutiny is particularly necessary here for two additional reasons. First, the Illinois scheme grants unequal power to those voters residing in the Suburban District as opposed to those residing in the City District. Second, Illinois gives preference among political parties to those whose members are relatively equally divided between the two districts and disadvantages parties of equal size whose members are more concentrated in one district rather than the other.

### A. By Requiring Equal Numbers of Signatures From Districts of Substantially Disparate Population, Illinois Violates the Requirement of Voter Equality in Selection of Representatives.

Voter equality is one of the most fundamental precepts of our representative form of government.



> Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit.

*Gray v. Sanders*, 372 U.S. 368, 379 (1963).

The seminal application of that principle to the ballot access process came in *Moore v. Ogilvie*, 394 U.S. 814 (1969). For independent candidates for statewide office, Illinois required filing 25,000 signatures, including at least 200 from each of at least 50 counties. At the time, 93.4% of the State's registered voters resided in the 49 most populous counties and only 6.6% resided in the remaining 53 counties. This Court found the distributional requirement inconsistent with the constitutional requirement of voter equality, pointing out that:

> [I]t is no answer to the argument under the Equal Protection Clause that this law was designed to require statewide support for launching a new political party rather than support from a few localities. This law applies a rigid, arbitrary formula to sparsely settled counties and populous counties alike, contrary to the constitutional theme of equality among citizens in the exercise of their political rights. The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government.

*Id.* at 818-19.

The Court illustrated the forbidden discriminatory impact as follows:

> Under this Illinois law the electorate in 49 of the counties which contain 93.4% of the registered voters may not form a new political party and place its candidates on the ballot. Yet 25,000 of the remaining 6.6% of registered voters properly distributed among the 53 remaining counties may form a new party to elect candidates to office. This law thus discriminates against the residents of the populous counties of the State in favor of rural sections. It, therefore, lacks the equality to which the exercise of political rights is entitled under the Fourteenth Amendment.

*Id.* at 819.

Illinois then sought to replace this law by retaining the requirement of 25,000 signatures and limiting to 13,000 the number which could be counted from a single county. The Seventh Circuit struck down that version as conferring a similar discriminatory veto power:

> Under section 10-2 the entire electorate of Cook County, which represents 45% of all registered voters in Illinois, may not form a new political party and place its candidates on the ballot. Yet any 25,000 of the remaining 55% of registered voters properly distributed among the remaining 101 counties may form a new party to elect candidates to office. Put another way, the approximately 2,750,000 registered Illinois voters in urbanized Cook County do not have the power under section 10-2 to create a statewide political party to protect their own peculiar interests, while 25,000 voters in any two or more counties in rural downstate Illinois may create such a party to protect their distinctly different, and often competing interests. This two-county requirement, like the fifty county requirement in *Moore*, "discriminates against



> the residents of the populous counties of the state in favor of rural sections."

*Communist Party v. State Board of Elections*, 518 F.2d 517, 521 (7th Cir.), *cert. denied*, 423 U.S. 986 (1975).[9]

This conclusion is confirmed by the explanation of *Moore v. Ogilvie* in *Buckley v. Valeo*, 424 U.S. 1 (1976). There this Court upheld a system of matching funds for major party presidential candidates requiring raising of specified funds in at least 20 states. Reliance was placed on the unique and special need for dispersed geographic support created by the presidential election system: "A president is not elected by popular vote, but by winning the popular vote in enough states to have a majority in the Electoral College." *Id.* at 106. *Moore* was distinguished on the ground that:

> Only 7% of Illinois voters could have blocked a candidate from qualifying for the ballot, even though the statewide elections were decided by straight majority vote. The clear purpose was to keep any person from being nominated without support in downstate counties making up only 7% of the vote, but those same voters could not come close to defeating a candidate in the general election.

*Id.* at 144.

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[9] Since *Moore*, requirements of equal numbers of signatures from districts of substantially disparate population have consistently been declared unconstitutional. *Socialist Labor Party v. Rhodes*, 318 F. Supp. 1262, 1272 (S.D. Ohio 1970), *aff'd mem.*, 409 U.S. 942 (1972); *Socialist Workers Party v. Rockefeller*, 314 F. Supp. 984, 990 (S.D.N.Y. 1970), *aff'd mem.*, 400 U.S. 806 (1970); *Bloomquist v. Thompson*, 739 F.2d 525, 527-28 (10th Cir. 1984); *Libertarian Party v. Beerman*, 598 F. Supp. 57, 62 (D. Neb. 1984); *Socialist Workers Party v. Hare*, 304 F. Supp. 534 (E.D. Mich. 1969); *but see Cavanaugh v. Schaeffer*, 65 Pa. Commw. 620, 444 A.2d 1308, 1310-11 (1982) (requirement of 100 signatures from each of five counties upheld because four most populous counties had only 41.8% of population and because case involved judicial election and judges were not considered "representatives").

That analysis is equally valid here. The Suburban District is 30% less populous than the City District, as shown by the Census figures and the apportionment of the County Board. Yet even though the residents of the City District have the votes, if united, to control all countywide offices and a majority on the County Board, the residents of the Suburban District have the power to prevent the formation of a political party to effectuate such control. Thus, there is a clear violation of *Moore v. Ogilvie*.

### B. Illinois Also Grants an Improper Preference to Parties Whose Members Are Geographically Dispersed.

Even if the equality of individual voters is maintained, this Court has noted that

> It is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status. "Our ballot access cases ... focus on the degree to which the challenged restrictions operate as a mechanism to exclude certain classes of candidates from the electoral process. The inquiry is whether the challenged restriction unfairly or unnecessarily burdens the 'availability of political opportunity.'"

*Anderson v. Celebrezze*, 460 U.S. 780, 793 (1983) (footnote omitted). That is, a state may not skew the political process so as to favor some identifiable viewpoints as opposed to others held by an equal number of voters.

This sort of forbidden loading of the political dice is also inherent in the statute at issue here. The combination of the full slate requirement with a requirement of a district-by-district showing of support limits ballot access to those parties with sufficient support in



*all* districts. This clearly favors groups which are roughly equally dispersed between the two districts. As such a group grows in numbers, the group will be able to meet the signature requirements in both districts at about the same time. But a group of equal size which is concentrated in one district would have a surplus of signatures in one district and a deficiency in the other, so that it would need to grow larger than a dispersed group to be equally able to qualify for the ballot. The more heavily concentrated the group, the greater the disparity in ability to qualify a party—to the point where a group entirely located in one district, no matter how large, could never qualify for the ballot.

Many identifiable interests in our society are concentrated geographically. For example, African-Americans, a group to which the HWP seeks to appeal, are concentrated in cities. On the other hand, European-Americans are much more evenly dispersed, at least in Cook County. Similarly, farmers are concentrated in rural areas, while other occupations may be more evenly dispersed throughout a state. A state may not structure the political process so as to prefer some groups to others in ways not corresponding to their ability to elect or defeat candidates once nominated. Thus, voters in one district cannot be given a veto power over candidates to be nominated in another district nor a veto power over the ability to nominate candidates at-large who possess the requisite modicum of support in the political subdivision as a whole.

Nor should it be dispositive that wider geographic support might be necessary to obtain a majority for an at-large position. By definition, new parties almost always will be at least third parties, so even a strong plurality might win an election. More importantly, as previously explained, the ability to field candidates can significantly advance the political interests of a new party's constituency even without ever winning an election. Consequently, no one group or identifiable class of groups may properly be given a preference over another group or class of groups in obtaining a position on the ballot.

Cases which have held otherwise have focused exclusively on the equality of power given to *individual* voters and failed to consider

how geographic distribution requirements disadvantage concentrated *groups* of voters.[10] Yet, by definition, the activities of political parties involve groups of voters and not just individuals, so equal treatment of equally numerous *parties* is a matter of constitutional concern. Thus, the results reached in those cases should not be deemed dispositive of the argument presented here, which does not appear to have been considered. Moreover, several of the cases approve only a requirement for signatures in half of the equal-population districts involved, so those cases do not support the requirement here of signatures in *all* districts.[11] Similarly, none of them permitted lack of

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[10] *Morritt v. Governor*, 42 N.Y.2d 347, 397 N.Y.S.2d 929, 366 N.E.2d 1285 (1977), *appeal dismissed for want of a substantial federal question*, 434 U.S. 1029 (1978) (requirement of 100 signatures from each of half the Congressional districts in the state to obtain position on primary ballot for statewide office); *Udall v. Bowen*, 419 F. Supp. 746 (S.D. Ind. 1976), *aff'd mem.*, 425 U.S. 947 (1976) (500 signatures from each Congressional district to place name on presidential preference primary ballot); *Libertarian Party v. Bond*, 764 F.2d 538 (8th Cir. 1985) (requirement signatures equal to 1% of vote in all Congressional districts or 2% in half of districts); *Johnson v. Cuomo*, 595 F. Supp. 1126 (N.D.N.Y. 1984) (same requirement as in *Morritt* for new political party presidential candidates); *Libertarian Party v. Davis*, 591 F. Supp. 1561 (E.D. Va. 1984), *aff'd* 766 F.2d 865 (4th Cir. 1985) *cert. denied*, 475 U.S. 1013 (1984) (200 signatures from each Congressional district for new party presidential candidates).

[11] Summary adjudications by this Court are not precedential as to more than "'the precise issues presented and necessarily decided. . . .' A summary disposition affirms only the judgment of the court below and no more may be read into [this Court's] action than was essential to sustain the judgment." *Anderson v. Celebrezze*, 460 U.S. 780, 784 n.5 (1983).

In this regard, it is significant that *Udall v. Bowen*, 419 F. Supp. 746 (S.D. Ind. 1976), aff'd mem., 425 U.S. 947 (1976), did not involve a candidate with geographically concentrated support but merely an inadvertent failure to make a timely filing of one component of the petition. Thus, the plaintiff there could not assert the rights of political parties, like the HWP, whose support is geographically concentrated. *See Rosario v. Rockefeller*, 410 U.S. 752, 757-58 (1973) (requirement of advance enrollment in party did not disenfranchise voter who could have enrolled in timely manner but failed to do so).

*footnote continued on page 19*



support in one district to prevent placement on the ballot of candidates in another district, when those candidates had ample support in the district where they proposed to run.

This Court should now consider the problem of discrimination against a geographically concentrated group and hold that this discrimination, as well as the improper enhancement of the power of the residents of the less populous Suburban District, violates the Fourteenth Amendment.

## II. ILLINOIS HAS UNCONSTITUTIONALLY INFRINGED ON THE RIGHT OF THE HWP TO ASSOCIATE WITH THE HWP CANDIDATES FOR THE PURPOSE OF EXPANDING ITS ACTIVITIES INTO AN ADDITIONAL POLITICAL UNIT.

The HWP is an established political party in the City of Chicago. (HWP Pet. 6.) As such, it has an established constitutional right to associate with new and potential adherents for the purpose of seeking "political power in the community." *Tashjian v. Republican Party*, 479 U.S. 208, 216 (1986); *Eu v. San Francisco Democratic Comm.*, 489 U.S. 214 (1989). Moreover, this right includes "the freedom to identify the people who constitute the association."

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*footnote continued from page 18*

In *Moritt v. Governor*, 42 N.Y.2d 347, 397 N.Y.S. 2d 929, 366 N.E. 2d 1285 (1977), *appeal dismissed for want of a substantial federal question*, 434 U.S. 1029 (1978), the issue presented in this Court related solely to a claim of unequal weighting to the votes of those residing in different districts. While the districts were of equal population, the distribution requirement was applied to a candidacy in a party primary and party members were not equally distributed among districts. Thus, the claim was that the districts had disparate populations *of those eligible to participate in party affairs*, thus making *Moore v. Ogilvie* directly applicable. Jurisd. Stmt., No. 77-524, 8-13. Rejection of *that* claim does not require that distributional requirements be sustained against the different challenge presented here.

*Tashjian*, 479 U.S. at 214; *Democratic Party v. Wisconsin ex rel. LaFollette*, 450 U.S. 107, 122 (1981). In *Tashjian*, the Court struck down a Connecticut law which required voters in any party primary to be registered members of that party *even though the party wished to permit independent voters to participate*. The Court found that because the statute limited the group of registered voters who could participate in the primary, the State impermissibly limited the party's "associational opportunities." 479 U.S. at 216.

The State of Illinois has similarly restricted the associational rights of both the established HWP and the petitioners who wish to participate in that party. This prohibition was imposed without regard to the shared desire of the HWP and the HWP candidates to associate with one another. Despite that desire, Illinois absolutely prohibited the use of the HWP name by the HWP candidates. On the record, the established HWP had no objection to the use of the HWP name by the HWP candidates. (Board Pet. App. 40a.) Both the HWP and the HWP candidates regard themselves as affiliated. Thus, as in *Tashjian*, there is no conflict between the associational interests of the party (the established HWP) and those whose participation the party encourages (the HWP candidates who seek to carry its banner). *Id.* at 216, n.7.

The interest asserted by Illinois is in preventing voter confusion. (Board Pet. App. 39a.) But there can be no confusion unless the two organizations claiming a single name are in fact independent of one another rather than being affiliates.[12] *Tashjian* teaches that while a state has a legitimate interest in preventing voter confusion, that interest does not make it permissible for the state to "act as the ideological guarantor" of the established party by ensuring that voters are not misled by a candidate whom the state views as not a "true" member of the party. *Id.* at 220. A state has no interest in limiting who a party can allow to operate under its name and in concert with it. The

[12] It is not necessary that they be the same, any more than the Democratic Party of Cook County need be the same as the Democratic Party of DuPage County. It is enough that both groups regard themselves as being united in a common cause.



State of Illinois may have a legitimate concern in preventing two *different* parties with the same name from running candidates in different elections, but it cannot have a legitimate concern with whom a political party chooses to include among its members. As this Court has stated:

> The Party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.

*Id.* at 224.

Nor can Illinois support its action by asserting that the HWP failed to follow the appropriate procedures to decide to affiliate with the HWP candidates. (See HWP Pet. App. 17 (ruling of the Circuit Court), 52-53 (dissenting opinion to Electoral Board decision)) To begin with, it was not at all clear that *any* action was necessary. Neither the Electoral Board nor the Circuit Court believed the prohibition on use of an established party name applied outside the political unit(s) in which that party was established. (Board Pet. App. 39a-40a, 20a-21a.) The Illinois Supreme Court has ruled that the Electoral Board and the Circuit Court misread the statute, but the HWP and HWP candidates could hardly be blamed for having shared that reading.

Moreover, even if the prohibition had been clear, there was (and is) no established procedure for an established party to authorize use of its name by aspirants to office in a different jurisdiction or to affiliate with such aspirants. Thus, if the HWP chose the wrong procedure, the cause lay largely in the failure of Illinois to prescribe a procedure (or even to indicate that consent or affiliation was possible).

Since the State has failed to make such a procedure available to the HWP, it cannot now attack the method by which the party has itself decided to expand. Moreover, the State certainly cannot create

such a procedure after the fact and make it applicable to petitioners. A restrictive interpretation of an election rule which compromises fundamental rights may not be imposed without "forewarning" those subject to the rule. *Briscoe v. Kusper*, 435 F.2d 1046, 1055 (7th Cir. 1970).

In *Briscoe*, voters and Chicago aldermanic candidates barred from ballots filed a civil rights action alleging that the election authorities violated their constitutional rights by rejecting signatures on nominating petitions for "highly technical reasons." *Id.* at 1051. The Seventh Circuit found that the authorities had employed a restrictive interpretation, contrary to its own past practice, of vague petition signature rules without any explanation or advance warning to candidates. The effect of this new interpretation was to "nullify previously acceptable signatures" at a time when petition circulators could no longer alter their circulating techniques. *Id.* at 1055. Because fundamental rights were implicated, "those interested require certain knowledge [at the time they act] of what is expected of them by the state." *Id.* The Seventh Circuit therefore held that "where there is no advance clarification or statement" of a rule, "the Constitution permits enforcement of the statutory rule in only the least restrictive and most obvious manner." *Id.* at 1056.[13] Application here, without any advance notice, of an ambiguous rule in an extremely restrictive way violates that principle.

Moreover, given the lack of specificity in the statute at issue combined with the complete absence of advance warning to petitioners regarding the nature of the Rule's application, the State cannot constitutionally justify the complete exclusion of the HWP candidates from the ballot. For even if the interpretation which prohibits

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[13] *See Griffin v. Burns*, 570 F.2d 1065, 1075-79 (1st Cir. 1978) (unconstitutional to retroactively apply new interpretation where effect would be to disenfranchise voters whose ballots were cast in accordance with prior practice); *Gartrell v. Knight*, 546 F. Supp. 449, 453-54 (N.D. Ala. 1982); *Williams v. Sclafani*, 444 F. Supp. 906, 911-12 (S.D.N.Y. 1978), *aff'd mem.*, 508 F.2d 1046 (2nd Cir. 1978).



the petitioners from using the HWP name can be viewed as reasonable, the harsh remedy of exclusion from the ballot cannot. Any voter confusion resulting from use of the HWP name could be eliminated simply by deleting that name from the ballot line on which the candidates would appear. *See Vasquez v. Municipal Officers Electoral Board*, 115 Ill. App. 3d 1014, 450 N.E. 2d 1379 (3rd Dist. 1983) (allowing candidates to appear but requiring omission of confusingly similar party name). Even if the objective is legitimate, the Constitution requires a state to accomplish that end narrowly and fairly so as to avoid obstructing and diluting these fundamental liberties. *Kusper v. Pontikes*, 414 U.S. 51 (1973).

The State of Illinois seeks to place a wall around the established HWP without its consent and without any justification. By limiting whom the HWP can associate with, the State has violated the First and Fourteenth Amendments.

## CONCLUSION

For all of the reasons stated above, the judgment of the Supreme Court of Illinois should be reversed and the Order of the Cook County Officers Electoral Board should be reinstated.

Respectfully submitted,

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